

**DECISION MAKING BY CHINA AND THE UNITED STATES IN
THE UNITED NATIONS SECURITY COUNCIL:
THE DARFURIAN CHALLENGE TO STATE SOVEREIGNTY**

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ABSTRACT

The thesis investigates how China and the United States used state sovereignty in their official statements provided to the United Nations Security Council when discussing the Darfur conflict during the time period between 2004 and 2009. The thesis looks in particular at the official statements made with regards to the three different measures taken by the Security Council which were: the implementation of sanctions, the referral to the international criminal court and the deployment of peacekeeping. The thesis found that China applied a more cautious, but consistent, approach in which breaches of state sovereignty were never officially supported. The United States use of state sovereignty evolved as it became more willing over time to breach the sovereign rights of Sudan. The investigation into the official stance by China and the United States also provides general conclusions with regard to state sovereignty in contemporary international relations. First, the thesis finds that state sovereignty is still at the core of decision making in the United Nations Security Council, and as well in international relations, and there no present challenges to the role state sovereignty in contemporary international relations. Nonetheless, the different interpretations applied by states such as China and the United States, delays the decision-making process as states disagree on justifiable breaches of state sovereignty. State authorizes, such as the Government of Sudan, use state sovereignty as a barrier to effective international action to prevent atrocities and heinous crimes against humanity. In this application of state sovereignty, the rights of nation -states are protected more than the individual rights of human beings.

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1. STATE SOVEREIGNTY IN THE 21ST CENTURY

1.1 Introduction

State sovereignty is not only described as the key building block of international law, but the key building block of international relations. The main principle of state sovereignty is the notion that nation states have the authority to govern their people and their territory without any interference from other nation states. Small and large states are alike in that they have equal rights and have no external authority over them. The notions of territorial sovereignty, equality and non-interference are all enshrined in the United Nations Charter of Human Rights, which enforces the state-centered system of international relations. Nevertheless, the main principles of state sovereignty are being challenged given a quickly evolving international environment.

Since the creation of the Charter in 1945, 150 nation states, many non-state actors and also trans-national organizations have entered the world stage. New state borders have been created, while others have been lost or changed. Conflicts have shifted from occurring between countries to occurring within countries. There has not only been a change of the international environment, but also to the ideas that shape international relations and the state-centered system. Human security has provided a challenge to sovereignty as a key focus area as individual security has been placed ahead of state security in importance, and that individual protection can come from within a state or beyond a state's borders. Human rights advocates are pressing for a new agenda that shifts from the traditional state system to one of state accountability not only to its own people and territory, but also to the world. It is difficult to determine the impact that the challenging environment and new ideas might have had on state sovereignty. One way to understand how state sovereignty has been affected is to look at how nation states are using state sovereignty to address contemporary international relations.

Some nation states are considered more powerful than others given their influence and political persuasion in international relations. Two examples are China and the United States where the United States is often referred to as the hegemonic super power

because of its economic and military strength, with China fast becoming a contender.¹ On a regular basis their geopolitical, economic and military strengths are compared and analyzed by academics. Examples of comparisons include everything from the size of military expenditures and economic growth to resource extraction in Africa. While economic comparisons are on the rise, there have been few comparative analyses of adherence to international laws and ethics, or the consideration of state sovereignty in international relations.

While China and the United States have robustly defended the significant role of state sovereignty in international relations, they have nonetheless taken a different approach on how it should be applied. The United States is often accused by academics of having a definition of state sovereignty that is constantly shifting to suit unique situations. China, on the other hand, has been criticized for having a rigid and traditional definition of state sovereignty that does not take into consideration some of the recent changes in international relations. China and the United States provide excellent examples of the complexities involved with the application of international law where there is no higher authority to enforce one set of rules. This is a reflection of the reality of international law where nation states have the liberty of interpretation and integration into domestic judicial systems. Under such a system, there are several definitions of state sovereignty which result in differing interpretations and applications within each foreign policy.

There is no better case study to reflect the complexities of state sovereignty in contemporary international relations than the Darfur conflict in Sudan. The circumstances of the conflict challenge many aspects of state sovereignty. In the case of Darfur, the Sudanese government is not only unwilling to protect its own population against human rights abuses, but has been found guilty as a perpetrator of crimes against humanity. The international community has been reserved in reacting to such atrocities, given that the Government of Sudan has repeatedly demanded that its rights as a sovereign state must be respected.

¹ Ted C. Fishman, China Inc: How the Rise of the Next Superpower Challenges America the World (New York: Scribner, 2006) 296.

In response to the atrocities in Darfur, the United Nations Security Council (the Security Council) has passed twenty-five resolutions between 2004 and 2009 that have included sanctions against the perpetrators, referrals of the atrocities to the International Criminal Court (ICC) and the deployment of a United Nations and African Union hybrid peacekeeping force. These three distinct decisions, if implemented in their entirety, will weaken the Sudanese government's sovereignty. In effect, the discussions in relation to the resolutions include many debates and statements on the topic of state sovereignty. As permanent members of the Security Council, China and the United States have been at the centre of the deliberation and decision-making concerning the resolutions. Nonetheless, China and the United States have been on opposite sides of the arguments. China has argued against any intrusive actions against the Government of Sudan, while the United States has initiated several of the resolutions that could weaken the authority of the Government of Sudan.

The main objective of this thesis is to investigate how China and the United States used state sovereignty in their official statements provided to the Security Council when discussing the Darfur Conflict during the period between 2004 and 2009. The thesis will also investigate different approaches to state sovereignty. Specifically, do different definitions of state sovereignty explain the differences between country's political positions - and, how do different approaches affect the Security Council and influence its effectiveness in responding to the Darfur conflict? I will investigate and compare the arguments presented by China and the United States for state sovereignty in the case study of Darfur between 2004 and 2009 to provide insight into how state sovereignty is interpreted in contemporary international relations.

The thesis will begin with a discussion of the main principles of state sovereignty as they are codified into international law, with a particular focus on the United Nations Charter. Furthermore, the thesis will investigate how China and the United States have integrated the main principles of state sovereignty into their foreign policies and international activities. The introduction will also include a brief introduction to the role of China and the United States as permanent members in the United Nations Security Council.

Chapter 1 provides a brief introduction to the conflict in Darfur that will serve as the case study for this thesis. The main focus of this chapter is to review the response to the conflict by the Security Council with a focus on China and the United States. Additionally, the chapter will review the resolutions and the main decision-making positions within the Security Council. In effect, this chapter will provide a synopsis of conflict and the international environment within which China and the United States adopted their foreign policies.

The next three chapters will examine how China and the United States used state sovereignty in the resolution decision-making process. The chapters will be divided by the three different types of resolutions: implementing sanctions, referral to the international criminal court and the deployment of a peacekeeping force. The chapters will examine official statements and actions taken by China and the United States pertaining to each of the three different types of resolutions, and how state sovereignty played a role in their decision-making.

The conclusion will provide an analysis of the official positions of China and the United States in a case study of the Darfur conflict, and will provide observations based on the analysis about the role of state sovereignty in contemporary international relations and how it relates to the effectiveness of the Security Council.

1.2 Introduction to International Law and State Sovereignty

International law consists of two different parts: customary international law and codified international law. Customary international law is an informal, unwritten body of rules that originates from the practice of states together with a shared belief that the practice is required by law or an international norm.² The codification of international law is the formalization process of customary international law into treaties or quasi contractual written documents by two or more states and a registered third party.³ The treaty that prevails over all others is the United Nations Charter of 1945 that has been

² Michael Byers and Simon Chesterman, "Changing the Rules about Rules? Unilateral humanitarian intervention and future of International Law" in Humanitarian Intervention: Ethical, Legal and Political Dilemmas, Eds. J. L. Holzgrefe and Robert O. Keohane. (Cambridge: Cambridge University Press, 2003) 179.

³ Ibid.

adopted by 192 states. The cornerstone of the Charter, to which all signatories have agreed, is state sovereignty (Article 2.1).⁴

The notion of sovereignty was first introduced to international law through the Treaty of Westphalia in 1648 in an effort to establish international order and peace in Europe after decades of war. The Treaty of Westphalia spoke to the supremacy of sovereign authority within the state. All sovereign authorities were to be independent of each other while at the same time equal.⁵ The notion of sovereign authorities evolved into sovereign nation states. According to the Montevideo Convention of 1933, the requirements for sovereignty are a permanent population, a defined territory and a functioning government.⁶ These basic principles of state sovereignty were codified into the UN Charter along with an understanding on how it should be enforced in international relations.

According to the UN Charter, the main purpose of the UN is to maintain international peace and security by developing “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples” (Article 1.2).⁷ In achieving this purpose, the UN will act as a “centre for harmonizing the actions of nations” (Article 1.3).⁸ To obtain its purpose, the Charter obliges its members to respect that all members are sovereign equals (Article 2.1). All conflicts should be settled so not to disrupt international peace and security (Article 2.3), and at no time shall members use “the threat or use of force against the territorial integrity or political independence of any state” (Article 2.4).⁹ In its Charter, the UN and its members, have in essence agreed to a set of fundamental principles of state sovereignty; equality of rights among states, non-interference into internal affairs, and mutual respect for all sovereign states. If these fundamental principles are respected, states will peacefully coexist.

In 1970, the UN General Assembly adopted the *Declaration on Principles of International Law Friendly Relations and Co-operation Among States in Accordance*

⁴ The United Nations Charter (1945), available on-line: at www.un.org/aboutun/charter, last used April 28, 2009.

⁵ ICISS (supplement volume) p. 6

⁶ Ibid.

⁷ UN Charter.

⁸ Ibid.

⁹ Ibid.

with the Charter of the United Nations (Resolution 2625). This Declaration placed the following principles of state sovereignty at the core of international law:

1. The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,
2. The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,
3. The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,
4. The duty of States to co-operate with one another in accordance with the Charter,
5. The principle of equal rights and self-determination of peoples,
6. The principle of sovereign equality of States,¹⁰

After the completion of the Declaration, the International Court of Justice (ICJ) reflected that these principles of state sovereignty were the foundation on which “the whole of international law rests.”¹¹

The Charter prohibits the UN to “intervene in matters which are essentially within the domestic jurisdiction of any state,” (Article 2.7)¹² but also provides a legal loophole for intervention in Chapter VII. If there is a threat to, or a breach of international peace and security, the Security Council has the authority to make recommendations or decide to take certain measures (Article 39). Article 41 gives the Security Council the authority to evoke non-military measures, such as economic sanctions, communication end (travel ban) or severance of diplomatic relations, while Article 42 gives the Security Council the authority to impose military measures. Security Council resolutions are legally binding on all members of the UN, and all members can be asked to provide certain resources and support to implement a resolution.

The Charter does not provide the Security Council with any directions regarding which acts qualify as threats to international peace and security, or guidelines for how to impose measures. As noted by Edward C. Luck, the wording of Chapter VII gives the

¹⁰ Declaration on Principles of International Law Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations

<http://www.unhcr.org/refworld/topic,459d17822,459d17a82,3dda1f104,0.html>

¹¹ ICISS, 6.

¹² UN Charter.

Security Council the flexibility to “pick the cases, the timing and the tools for its intervention.”¹³ Unfortunately, the Security Council’s track record in responding to international peace and security threats has been “spotty at best,”¹⁴ according to Luck. But regardless of the “spotty” track record, the Security Council continues to be the highest approved international governance body delegated with the powers to protect or override the sovereignty of a state.

1.3 Challenges to State Sovereignty in the 21st Century

From 1946 to 2002, the Security Council evoked Chapter VII in 268 resolutions.¹⁵ During the Cold War period, the Security Council tried to isolate itself from confronting issues of human rights concerns or possible humanitarian intervention. As noted by Adam Roberts, “interventions and proposals for intervention by either superpower or their allies were viewed as suspect on both legal and prudent grounds.”¹⁶ The few resolutions that were brought forth in the Security Council were usually not contentious, and few resolutions were vetoed. When the Cold War ended, the Security Council became increasingly concerned with threats to international peace and security, including the violations of human rights.¹⁷ Throughout the 1990s, the Security Council evoked its Chapter VII powers for human rights violations and humanitarian disasters threatening international peace and security in Bosnia and Herzegovina, Timor-Leste, Sierra Leone, Liberia and other locations. In these resolutions the Security Council identified refugee flows, human suffering, ethnic cleansing, international terrorism, and weapons of mass destruction (WMD) proliferation as threats to international peace and security.¹⁸ The broadening interpretation of what a threat to international peace and order might be has been seen as a challenge to state sovereignty and the principle of non-interference.

¹³ Luck, 22-23.

¹⁴ Luck, 3.

¹⁵ Patrick Johansson. UN Security Council Chapter VII Resolutions 1946-2992: An Inventory. Uppsala: Department of Peace and Conflict Research (2003).

¹⁶ Sir Adam Roberts, “UN and Humanitarian Intervention” in *Humanitarian Intervention and International Relations*, ed. By Jennifer Welsh (Oxford: Oxford University press, 2004) 78.

¹⁷ Julie A. Mertus. The United Nations and Human Rights: A Guide for A New Era (New York: Routledge, Taylor & Francis Group, 2005) 115.

¹⁸ *Ibid*, 124-125.

Nonetheless, the changing interpretation of what is a threat to international peace was also a reflection of an evolving international environment.

The Thirty Years of War from 1618 to 1648 brought huge numbers of casualties and famine to all the major continental powers of Europe. It was with hopes of bringing international order in Europe that the major powers signed the Treat of Westphalia. Unfortunately, the wars continued between the continental powers in Europe with the 20th century noted as the bloodiest in all history.¹⁹ The founding of the League of Nations and later the United Nations was much in response to the early bloodshed in the 20th Century. The purpose of the UN Charter was to prevent conflicts between states that could escalate into another world war. However, the UN Charter failed to incorporate principles on how to deal with intra-state conflicts, which today constitute 95 per cent of all conflicts.²⁰ The Charter gave the Security Council the mandate to review “any dispute, or any situation which might lead to an international friction or give rise to a dispute,” (Article 34)²¹ but it did not give the Security Council the enforcement powers to settle internal conflicts. As noted above, the Charter does not authorize the Security Council to intervene in matters that are essential within domestic jurisdiction (Article 2). Nonetheless, the Security Council has argued that internal conflicts or humanitarian disasters can destabilize international peace. By intervening in the domestic jurisdiction of a state, the UN would be violating the sovereign rights of a nation state as defined in international law.

It has been argued that the gap between customary international law and contemporary international relations was to blame for the Security Council’s inadequate response to several humanitarian disasters and conflicts in the 1990s. The reaction to Security Council’s inadequate response to humanitarian disasters became the main drivers for the human security agenda. In the 1990s, “human security” presented a humanitarian agenda that valued human rights, international humanitarian law and socioeconomic development based on equity. The human security agenda was based on the notion that there should be freedom from “pervasive threats to people’s rights, their

¹⁹ Benjamin A. Valentino. Final Solutions: Mass Killing and Genocide in the 20th Century (New York: Cornell University Press, 2004) 1-2.

²⁰ Karen A. Mingst and Margaret P. Karns, The United Nations in the 21st Century (Boulder: Westview Press, 2007) 83.

²¹ Edward C. Luck, UN Security Council: Practice and Promise (New York: Routledge, 2006) 21.

safety or even their lives.”²² The advocates of the human security agenda recognized nation-states as primary providers of security, but if a state was inept or unwilling to provide protection, other international actors had a responsibility to provide humanitarian aid and protection. In essence, human security advocates argued that international peace and security are assured only when people have obtained security. According to the International Commission on Intervention and State Sovereignty (ICISS) the human security agenda became the most significant threat to the traditional concept of state sovereignty and the notion of non-intervention.²³ Nonetheless, it was probably the ICISS that presented the most profound challenge to international law.

The Government of Canada and the UN established the ICISS in a joint effort to develop a new framework to reconcile the traditional concepts of state sovereignty with the humanitarian agenda. After extensive investigation and debate, the ICISS published its renowned report called “The Responsibility to Protect” in 2001.²⁴ The essential idea behind the Responsibility to Protect (R2P) is that sovereign states have the responsibility to protect their own citizens from harm, and when states are unable or unwilling to do so, the responsibility rests with the international community of states. If the international community is forced to intervene, it is not to wage a war upon the state that has failed or has been unwilling; it is to protect the victims that are experiencing atrocities. The report argues that the only legitimate justification for intervention would be “conscience-shocking situations,” such as “large-scale loss of life” or “large-scale ethnic cleansing.”²⁵ The R2P was endorsed at the UN World Summit in 2005, and by the Security Council in 2006 as a basis for collective action against genocide, ethnic cleansing and crimes against humanity.”²⁶

The R2P provide a genuine challenge to the definition of state sovereignty in the UN Charter. However, it is important to note that an international endorsement of the principles of the R2P does not change international law. As noted by Simon Chesterman, a professor of international law, there is no existing international law that would justify

²² ICISS, 11.

²³ International Commission on Intervention and State Sovereignty, The Responsibility to Protect (Ottawa: International Development Research Centre, 2001) 9-11.

²⁴ ICISS, p. VIII.

²⁵ Ibid, 32.

²⁶ Ibid.

state intervention for humanitarian purposes.²⁷ It is only through state practice that a new international norm can be codified into international law. In effect, the real test to R2P is whether states will decide to integrate this new norm into their foreign policies and decision-making.²⁸

1.4 China and State Sovereignty

In *Unifying China, Integration with the World*, Allen Carlson provides an analysis of China's relationship with the international community (including the United Nations) by analyzing what he describes as the "prominent role of sovereignty."²⁹ Carlson argues that

"Sovereignty, and the extent to which it creates impermeable walls between any given state and other actors in the international system, lies at the core of contemporary China's evolving relationship with the rest of the world."³⁰

This argument by Carlson is well supported by an examination of the official Chinese foreign policy documents, referred to as the White Papers. The Chinese White Papers were published in the 1990s to better articulate the Chinese stance on several controversial foreign affairs issues. To date there have been over 60 published White Papers on topics, such as Tibet, human rights and national security.³¹ These documents provide insight to China's official foreign policies. Central to the White Papers are the Five Principles of Peaceful Coexistence: mutual respect for sovereignty and territorial integrity; mutual non-aggression; non-interference in each other's internal affairs; equality and mutual benefit; and peaceful coexistence.³² The Premier of China, Wen Jiabao, recently stated of the Five Principles that "sovereignty is the birthmark of any independent state, the crystallization of its national interests and the best safeguard of all it holds dear." Furthermore, the premier argued "the UN should act in accordance with the Five Principles and its own Charter, and play its constructive role more vigorously in

²⁷ Welsh.

²⁸ Nick Grono, "Briefing – Darfur: The International Community's Failure to Protect" in *African Affairs*, 105/421 (2006) 623-24.

²⁹ Allen Carlson, *Unifying China, integrating with the World* (Stanford: Stanford University Press, 2005) 1.

³⁰ Ibid, 225.

³¹ The Chinese government website is available at www.china.org.cn

³² Jiang Zhuqing (China Daily), "Five Principles" Still shaping global Peace" June 29, 2004. http://www.chinadaily.com.cn/english/doc/2004-06/29/content_343578.htm

resolving international disputes, preserving peace, and providing humanitarian assistance.”³³

China, being one of the permanent members of the Security Council, has the power to influence the Security Council’s final decision-making outcomes and resolutions. In the beginning, China was a non-participating member of the Security Council that rarely tried to influence decision-making processes. In the last decade, China has become increasingly engaged in the Security Council discussions and by voting on almost every resolution.³⁴ Although China has been provided with the power to veto resolutions as a permanent member of the Security Council, it has rarely evoked this power. By investigating the resolutions of which China has vetoed, Sally Morphet found a pattern. Morphet argues that the pattern “illustrate[s] China’s main concern regarding peacekeeping enforcement operations and certain other UN recommendations or decisions.”³⁵ Morphet argues that the reason why peacekeeping has been an issue to China is the

“importance of protecting its own territorial integrity and sovereignty against Western-dominated international military, political, human rights and humanitarian intervention without agreement from the country concerned.”³⁶

Morphet relates this positioning to China’s support of state sovereignty as articulated in the Five Principles of Peaceful Coexistence.³⁷ In essence, China argues that there are no circumstances that would trump the authority of a sovereign state, including the abuse of human rights.³⁸ Though China vigorously insists that nothing can trump state sovereignty, Ron Wheeler discovered that China has not prevented Chapter VII being used repeatedly for resolutions covering human rights cases in the 1990s.

“Verbally supporting national sovereignty and non-interference in the internal affairs of states, China does little with its formidable voting power to block actions which are inconsistent with those principles.”³⁹

³³ Ibid.

³⁴ Sally Morphet, “China as a Permanent Member of the Security Council: October 1971-December 1999,” Security Dialogue (Vol. 31, No. 2, 2002) 154 and 160.

³⁵ Ibid, 165.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Carlson, 174-175.

³⁹ Ron Wheeler, “China, the UN and National Sovereignty: Drawing a Line on Supranationalism?” Swords and Plowshares: the United Nations in Transition, eds. Ron Wheeler and Howard McConnell (Toronto: Canadian Scholars Press Inc., 1997) 45.

Why China has been indolent to defend its own ideological beliefs are explained by Wheeler to be justified by the complexities of the international political environment and the relationships within the UN. Wheeler makes an important statement as it reflects on the actual Chinese application of state sovereignty. Although Chinese foreign policies reflect a rigid and traditional definition of state sovereignty, the state practice has reflected a willingness to be flexible with the application.

1.5 The United States and State Sovereignty

The United States “recognize[s] that international law has a critical role in world affairs, and is vital to the resolution of conflicts and the coordination of cooperation.”⁴⁰ These are the words of John B. Bellinger III, a legal advisor to the former Bush administration. Bellinger also argues that the US is practicing a strong commitment to international law. This argument is different to most arguments made by academics and other foreign policy officers who argue that the United States’ lack of commitment to international treaties illustrates unwillingness to embrace international law. Michael Chertoff, the former United States Secretary of Homeland Security, argues that the United States has been cautious in embracing international treaties that undermine the traditional concept of sovereignty. The traditional concept of state sovereignty is explained as the Westphalian model in which an “independent state is not subject to external control over its internal affairs without its consent.”⁴¹ Furthermore, Chertoff argues,

“Democracy is based on the principles that the people are sovereign and that only with their consent may a government rule with legitimacy. Democratic national sovereignty therefore reflects the ideal that citizens should be governed only by laws to which they have assented.”⁴²

⁴⁰ John B. Bellinger III, State’s Legal Expert Reiterates U.S. Devotion to International Law, The US State Department, June 7, 2007.

⁴¹ Michael Chertoff, “The Responsibility to Contain: Protecting Sovereignty Under International Law,” Foreign Affairs 88, no. 1 (January/February 2009) 132.

⁴² *Ibid*, 132.

In other words, Cherooff argues that imposing international law without the consent of its people would undermine the traditional concept of state sovereignty. A democracy is to choose its own laws, and not to have laws enforced on them by outsiders.

David M. Malone argues that how the United States has approached state sovereignty has defined its relationship to other states and international organizations. The protection of national sovereignty has always taken precedence over foreign and internationally promoted norms, standards and laws.⁴³ The protectionist approach to state sovereignty has resulted in a cautious approach to dealing with state sovereignty issues in international relations. Malone argues, a

“case-by case approach to the Security Council’s incursions into the sovereignty of UN member states, generally avoiding assertions of an abstract right or duty to intervene in situations of grave humanitarian crises. Where convenient in terms of US interest, or strongly compelling in terms of international humanitarian law, the administration was prepared to champion, or at least support, the violation of state sovereignty.”

Although it will be difficult to find a pattern in how the United States has interpreted international law and state sovereignty, a closer investigation of American behavior in the Security Council will shed light on its official positioning

Government publications are important in understanding the American view. Two significant documents are the National Security Strategy publications of 2002 and 2006. In the National Security Strategy (NSS) document published in 2002, the Bush administration focused on maintaining national security in a post-September 11 era. Though the document does not refer directly to international law and state sovereignty, the NSS 2002 makes statements that provide clear insight to the official policy towards the sovereignty of other states. The NSS 2002 claims that one of the “deadliest” challenges to international peace is rogue states.⁴⁴ Rogue states are nation-states that are brutalizing their own populations, squandering natural resources, and ignoring international law while creating environments fostering terrorism and threats to international peace security. The NSS 2002 goes on to pronounce that the United States

⁴³ David M. Malone, “A Decade of U.S. Unilateralism?” Unilateralism and U.S. Foreign Policy: International Perspectives, eds. David M. Malone and Yuen Foong Khong (Boulder: Lynne Rienner Publisher, 2003) 19.

⁴⁴ National Security Council, The National Security Strategy of the United States of America (Washington, DC: GPO, September 2002) 13.

was willing to consider a preemptive and unilateral approach to fight the emerging threats from rogue states.⁴⁵ In essence, the US argued that it would be independently willing to undermine the sovereignty of another state if faced with threats to its own national security or international peace. The United States had already put these policies into action in 2001 when it breached the sovereign powers of Afghanistan with a military intervention.

Four years later the National Security Strategy 2006 distinctively mentioned the Government of Sudan as an accomplice to the genocide in Darfur and a disruptor of regional security.⁴⁶ The document asserted that genocide must “not be tolerated.”⁴⁷ If perpetrators do not cooperate in finding peaceful solutions, “an armed intervention may be required, preferably by the forces of several nations working together under appropriate regional or international auspices.”⁴⁸ Again, the United States argued that there are conditions that can override the sovereign rights of a state, such as human rights abuses and genocides. Nonetheless, there was a shift on how to undermine sovereignty. The national security strategy has shifted from a potential unilateral approach to a more fluid application of state sovereignty that has taken into consideration the changing international environment. Nonetheless, it is a position on state sovereignty that is influenced by national interests.

1.6 Conclusion

The complexities of state sovereignty in international relations have not been fully comprehended. Some academics still view state sovereignty as a strong unchanging pillar that much of international relations rest upon, although others argue that state sovereignty is less rigid. Other academics argue that there are many challenges brought forth by globalization, the human rights movement and domestic conflicts that influence state sovereignty at some level of decision-making.⁴⁹ Nonetheless, there has been minimal research to support the arguments of the changing role of state sovereignty in

⁴⁵ Ibid, 14-16.

⁴⁶ National Security Council, The National Security Strategy of the United States of America (Washington, DC: GPO, March 2006) 15.

⁴⁷ Ibid, 17.

⁴⁸ Ibid.

⁴⁹ ICISS, 4-6.

contemporary international relations. This thesis will shed light on how two of the most influential powers, China and the United States, have exercised their definitions of state sovereignty through political actions to shape an emerging international response to the tradeoff between state sovereignty and human security.

2. THE DARFURIAN NIGHTMARE

2.1 Introduction

Darfur has a history of always being on the geographic and political periphery. While the vast geographic area with its extreme weather pattern kept the area isolated from unwanted guests and rulers, the political exclusion kept the region from gaining access to education, economic development, and protection. The government of Sudan's continuous disregard for Darfur fuelled a rebellious movement. The rebels were asking for basic rights such as safety from violence, starvation and political ignorance. Instead of providing the basic rights to the people of the Darfur, the government decided to clamp down on the rebellion. This was the start of the infamous Darfur conflict. The Security Council along with the international community has been slow to respond, and has been incapable of finding a peaceful resolution to the conflict. In the centre of the resolution debates in the Security Council is the notion of state sovereignty, as the government of Sudan has continuously repeated its rights against outside intervention. Hence, the Darfur conflict can provide a better understanding of the role of state sovereignty in contemporary international relations, and provides an excellent case study.

The purpose of chapter 1 is to introduce a case study of the Darfur conflict and to provide an understanding of the main actors and their positioning during the conflict. This background information is essential in comprehending the positioning and arguments made by China and the United States when discussing state sovereignty in the Security Council.

2.2 Background: Darfur on the Periphery

The territory of Darfur is remotely situated in the heart of Africa, completely landlocked from the sea, and being approximately 150,000 square miles, is almost the size of France.⁵⁰ The isolation of the region and its geographic vastness liberated it from early colonialism as Darfur was one of the last territories in Africa to be colonized by the

⁵⁰ Gerard Prunier. Darfur: The Ambiguous Genocide (New York: Cornell University Press, 2005) 2.

British into their Egyptian Sudan Empire 1916.⁵¹ The British colonial powers handled Africans and Arabs differently as it was assumed by the colonial powers that Arabs were morally and intellectually superior to the Africans.⁵² When the British began their quest to establish a Sudanese elite, education was provided to the Arabic North, while Darfur was ignored.⁵³ The conditions did not improve after Sudan received its independence in 1956. The country continued to be highly centralized, and Darfur continued to be on the periphery. The Darfur region became highly politicized as Darfurians were desperate for influence in Khartoum. At the same time, Khartoum introduced administrative changes that diminished the traditional leadership and divided tribal groups in Darfur.⁵⁴ In effect, a separated Darfur was incapable of presenting a unified front in Khartoum.

In the 1980s, the desertification and drought that had started in the mid 1970s worsened. The scarcity over water and resources intensified as Arabic nomadic tribes were entering Southern Darfur from Chad, Libya and other regions in the search for water. There was no effective government for the Darfurians to rely upon for safety, security or relief help. Hence, in response to the influx of Arabic nomadic tribes, the settled tribes (mainly the Fur) started village defence groups and militias.⁵⁵ By 1984, the famine became difficult to ignore as internally displaced peoples (IDP) camps were emerging outside Khartoum. The famine was also destabilizing the region as conflicts were breaking out in neighbouring provinces and countries.⁵⁶ The Khartoum government would not accept responsibility for the famine, and let international aid and donors deal with the situation.⁵⁷ The famine illustrated, yet again, how successive governments in Khartoum since the British conquest, have never cared about the peoples of Darfur.

⁵¹ M. W. Daly. Darfur's Sorrow: A History of Destruction and Genocide (New York: Cambridge University Press, 2007) 2

⁵² O'Fahey, 32.

⁵³ Prunier, 29-30.

⁵⁴ Prunier, 42-48.

⁵⁵ Human Rights Council, 11.

⁵⁶ Prunier, 50-51.

⁵⁷ Martin Meredith. The Fate of Africa: From the Hopes of Freedom to the Heart of Despair (New York: PublicAffairs, 2005) 361.

2.3 The Darfurian Nightmare

One of the most fatal consequences of the Sudanese government's inaction was the flood of arms into the region for self-protection against looters during the Darfur famine in the 1980s. The lack of an effective government, and the increasing number and prevalence of small arms, added to the instability in the region and resulted in violent outbursts regularly throughout the '80s and '90s.⁵⁸ However, it wasn't until 1999 that the current Darfur conflict began when all the Darfurian members of the Congress Party were removed from their seats.⁵⁹ In 2000, an anonymous "Black Book" was circulated within the government, wider Sudan and internationally. The book went into detail about the neglect people in Darfur suffered at the hands of their own government since its independence in 1956, whereby authorities in Khartoum adopted policies to keep Darfur underdeveloped. The revelations in the book were supported by government documents that could only have been leaked by government officials. The Black Book united several resistance groups in Darfur, but unfortunately also managed to strengthen the divide between the Arabs and the Africans within Darfur.⁶⁰ The Khartoum government reacted by recruiting militias from ethnic groups from the Baggara (Arabic Settlers in the South) and the Abbala (Arabic nomads). The Baggara and Abbala, which collectively became known as the Janjaweed, were recruited into the Sudanese military, the Popular Defense Front (PDF) and would be used in government-backed counterinsurgency operations.⁶¹ The government also recruited thousands of Arabs from neighbouring Chad to be trained alongside the Janjaweed.⁶²

At the same time, the rebels within Darfur divided into two separate rebel groups. The Sudan Liberation Movement/Army (SLM/A) adopted the ideology of the Sudan People's Liberation Army (SPLA) from southern Sudan, which called for a "united, secular state in which all are equal and which, by implication, Sudan's non-Arab demographic majority would rule."⁶³ The SLM/A under the leadership of the young lawyer, Abdel Wahid Nur had members from the Fur and Masalit tribes. The second

⁵⁸ Alex de Waal. "Briefing: Darfur, Sudan: Prospects for Peace." in *African Affairs* (104, no. 414 (2005): 127-13)127.

⁵⁹ Waal, 128.

⁶⁰ Daly, 275-277

⁶¹ Human Rights Council, 12.

⁶² Daly, 277

⁶³ Wall, 128.

group, the Justice and Equality Movement (JEM), adopted the Black Book as their manifesto to develop an agenda for their group. They called for “radical constitutional reform, regional empowerment, and social democracy, but not secularism.”⁶⁴ JEM’s founding chairman was Khalil Ibrahim, a medical doctor, from the Zagahawa tribe. JEM was noted to look much like a regional political party, with a political agenda, and members that were previous Darfurian politicians pushed out of the Khartoum government.⁶⁵

The SLM/A launched their first surprise attack in February 2003 against a garrison in Golu, followed with JEM joint attacks towards government airports and buildings in El Fashir, Nyala, and Mellit. At first, SLM/A and JEM experienced success in the initial attacks on government infrastructure and installations capturing arms and food.⁶⁶ The rebels had captured the strategic advantage in mobility by using guerilla-like tactics. Khartoum decided that they would respond with surprise attacks as well, but not against the rebels, but against the civilian population. While the Janjaweed surrounded the villages, the government planes would bomb villages using aerial attacks. When the bombing ended, the Janjaweed would move into the villages to loot, rape, torch and kill what was left.⁶⁷ The attacks were extremely brutal and vicious.

The ramifications of the war became quickly immeasurable. In January 2004, Jan Egeland, the UN under secretary-general for humanitarian affairs and emergency relief coordinator described the situation in Darfur as one of the worst humanitarian disasters in the world.⁶⁸ By March 2004, the UN’s World Health Organization (WHO) was estimating about 10,000 deaths a month by collecting data from the refugees.⁶⁹ Using these estimates, the UN estimated approximately 200,000 deaths in March 2006.⁷⁰ Since March 2004, there has been no mortality survey completed. The Government of Sudan is not interested in such a survey, and the United Nations is “too busy trying to help the

⁶⁴ Daly, 278

⁶⁵ Daly, 277.

⁶⁶ Human Rights Watch, page 9 (2004)

⁶⁷ Daly, 282-283

⁶⁸ Michael Clough. *Darfur: Whose Responsibility to Protect?* Human Rights Watch (January 2005) 3.

⁶⁹ Russel Smith, “How many have died in Darfur?” *BCS News*. February 16, 2005.

<http://news.bbc.co.uk/2/hi/africa/4268733.stm>

⁷⁰ Associated Press, “Death Toll of 200,000 disputed in Darfur,” March 28, 2008

<http://www.msnbc.msn.com/id/23848444/>

living.”⁷¹ A simple calculation using the WHO estimates from March 2006 brings the death toll to more than half a million people by June 2009. In addition to the death toll, the report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur estimated 2.7 million people to be displaced as a result of the Darfur conflict.⁷² Furthermore, over half of the original population of Darfur, estimated at 6 million, has been seriously affected by the conflict.

There have been many attempts to find a peaceful resolution to the Darfur conflict. The first agreement was made in September 2003 when the government of Sudan and SLM/A signed a ceasefire agreement. This agreement was at first successful in stopping fighting between the SLM/A and the government, but rather intensified the attacks by the Janjaweed on the civilian population. In April 2004, the Government, SLM/A and JEM signed a humanitarian ceasefire agreement and protocols to establish humanitarian assistance in Darfur. This agreement also called for the establishment of a ceasefire commission to monitor the situation under the auspices of the African Union (AU).⁷³ The ceasefire discussions of April 2004 were the start of several rounds of peace talks in Addis Ababa and Abuja. The peace talks got bogged down because the government in Khartoum was unwilling to compromise, and because SLM/A and JEM’s continuously focused on short-term demands for humanitarian relief and protection from the Janjaweed.⁷⁴ The peace talks did result in the signing of the Darfur Peace Agreement (DPA) on May 5, 2006, but its success was already doomed as JEM and factions of the SLM/A decided not to sign the agreement. Unfortunately, the DPA resulted in intensifying the conflict in Darfur.⁷⁵ The SLM/A splintered and fighting has since erupted between signatories and those opposed to the DPA. Also, the government of Sudan has thwarted attempts by the factions to meet and develop a united front for possible new peace talks. The UN Human Rights Council Report also reported that violations of

⁷¹ Associated Press, ‘Death Toll of 200,000 disputed in Darfur,’ March 28, 2008 <http://www.msnbc.msn.com/id/23848444/>.

⁷² United Nations Security Council, ‘the Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur’ February 10, 2009

⁷³ Human Rights Council, 13.

⁷⁴ Wall, 130.

⁷⁵ Karen Allan, ‘Hopes Fade for Solution in Sudan,’ BBC News (April 3, 2007).

human rights and international law had “increased by all parties to the conflict since the signing of the DPA.”⁷⁶

Another round of negotiations started in 2008 after an attempted coup by JEM against the government in Khartoum. This time, it was only JEM and the government of Sudan that were included in the negotiations. JEM argued that their group was more important than the other rebel groups, to which the Government of Sudan agreed in order to fragment the rebels. The two parties signed a peace accord on February 17, 2009. Though the accord raised hope for a future peace agreement, the fighting intensified, not only between JEM and the Government of Sudan, but also between the rebel groups. The Secretary General stated in his update on Darfur to the Security Council on February 2009 that, “the escalation in the level of violence in Darfur signals an investment in conflict rather than a serious commitment to peaceful negotiations.”⁷⁷ In light of these observations, peace in the near future seems unattainable.

2.4 The International Response to the Darfur Conflict

The first international response to the Darfur Conflict came from the Government of Chad in late 2003. The Chadian government took leadership in chairing negotiations as its own security and peace were been challenged by the conflict because of the large movement of people. Though the Chadian government has been challenged on its abilities as a neutral negotiator,⁷⁸ it became clear that Chad acted because no one else recognized the extent to which the conflict destabilized the region. By early 2004, the AU took over the leadership role in the negotiations. This resulted in the establishment of the AU Ceasefire Commission in April 2004 that deployed a small team of 60 monitors and 300 troops. Over the next two years, the AU took an official peacekeeping role and increased troops to 7,000. The expectations of the role of the AU in Darfur were high as it was the AU’s first peacekeeping mission in a major African conflict. Unfortunately, the AU mission quickly became hindered by the inexperience of the troops and lack of resources to pay for troops and equipment. In result, the AU peacekeeping force became

⁷⁶ Human Rights Council, 13.

⁷⁷ United Nations Security Council, “the Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur” February 10, 2009

⁷⁸ Williams, Paul D. and Alex J. Bellamy. “The Responsibility to Protect and the Crisis in Darfur.” Security Dialogue (36, no. 1, March 2005), 30.

stretched too thin, and was unable to provide as much assistance as was needed for the people of Darfur.⁷⁹ As the mandate of the AU peacekeeping force was coming to its end in September 2006, the AU announced that it was not willing to continue its mission and called upon the UN to take the leadership in Darfur.⁸⁰

The UN had taken a backseat role in the first years of the Darfur conflict, with the first mention of the conflict by Kofi Annan, the UN Secretary-General, in April 2004, when he contrasted the Darfur conflict with the Rwandan Genocide of 1994. Annan said that the atrocities in Darfur “leave me with a deep sense of foreboding. Whatever term it uses to describe the situation, the international community cannot stand idle... [It] must be prepared to take swift and appropriate action. By “action” in such situations I mean a continuum of steps, which may include military action.”⁸¹ In response to this speech, the UN Human Rights Commission decided to make an inquiry into the atrocities in Darfur. The Acting High Commissioner of Human Rights, Bertrand Ramcharan, presented the report to the UN Security Council May 7 in a closed meeting. His report found “a disturbing pattern of disregard for basic principles of human rights” and could document breaches of humanitarian law by both the armed forces of Sudan and Janjaweed.⁸² It provided evidence that the Government of Sudan was in fact arming, training and paying the Janjaweed. The report recognized that the Darfur rebel groups were also violating international human rights laws, but stated that the fault lie mainly with the Khartoum government because it had failed to address the marginalization and underdevelopment of the region.⁸³ The High Commissioner recommended that a more comprehensive investigation should be performed into the human rights violations in Darfur and that justice should be brought on the perpetrators.⁸⁴

The Darfur Conflict attracted more public attention because of increasingly disturbing findings by the Commission on Human Rights. Nonetheless, the Darfur

⁷⁹ Grono, Nick. “Briefing – Darfur: The International Community’s Failure to Protect.” African Affairs (105, no. 421, 2006) 626.

⁸⁰ _____, “African Union will “quit Darfur” BBC News September 5, 2006
<http://news.bbc.co.uk/2/hi/africa/5314544.stm>

⁸¹ Kofi Annan. Speech to the 60th Session of the UN Human Rights Commission. New York, April 7, 2004 (SG/SM/9197)

⁸² UN High Commissioner for Human Rights (2004), 12.

⁸³ UN High Commissioner for Human Rights (2004), 4.

⁸⁴ UN High Commissioner for Human Rights (2004), 22.

conflict did not appear on the Security Council agenda until June 2004. The first UN Security Council meeting on Darfur was to decide whether the UN should send a delegation to oversee the peace negotiations between the Government of Sudan and SPLM/A. Although the resolution did not directly speak to the Darfur conflict, it reaffirmed its “commitment to the sovereignty, independence and unity of Sudan.” During these early discussions, it became clear that any substantial agreement regarding Darfur would be difficult to achieve. China and Russia believed that the conflict was insufficient to breach Sudan’s sovereignty, while the United Kingdom and France were unwilling to prove them wrong. The United States did voice some concerns regarding the human rights abuses, but only confirmed its support for an AU solution.⁸⁵ Already at the first discussion of Darfur, there was a pattern developing in which China was unwilling to breach the state sovereignty of Sudan, and the United States reacted with horror to the human rights abuses while being unwilling to support Security Council action.

This same pattern of positioning among the permanent members within the Security Council continued throughout the 95 meetings in which the Darfur conflict was on the agenda from 2004 till the end of 2009. The majority of the meetings were followed by no action, while 25 of the meetings resulted in resolutions. The resolutions can be divided into three main actions that the Security Council responded with in the case of Darfur: sanctions against the perpetrators, referrals of the atrocities to the International Criminal Court (ICC), and the deployment of a United Nations and African Union hybrid peacekeeping force. When implemented the resolutions would all have negative implications for the sovereignty of Sudan. The government of Sudan has been present for many of the discussions in the Security Council, and has been outraged by the willingness to breach its sovereignty and violate the non-interference principle.

2.5 Relations with the Government of Sudan

The Security Council agenda is often a reflection of the global geopolitical and regional realities.⁸⁶ Permanent members can purposely block issues to prevent them from

⁸⁵ Bellamy and Williams (2006), 150.

⁸⁶ Mingst and Karns, 28.

reaching the agenda or can veto purposed resolutions. The United States has continuously since the creation of Israel in 1948, vetoed resolutions that proposed to penalize Israel for its actions against Palestine, while China vetoed a resolution in 2008 that would condemn the government of Zimbabwe for using violence in its recent election.⁸⁷ The inter-governmental relations between the United States and Israel or between China and Zimbabwe clearly affected the outcome of the Security Council resolutions. Similarly, in the case of Darfur, it is also important to understand intergovernmental relationships, particularly between Sudan and China and between Sudan and the United States.

The relationship between the United States and Sudan has been strained since the Arab-Israeli war in 1967 to which Sudan responded by breaking off diplomatic relations with the United States. In 1973, the United States broke off relations after Sudan released Egyptian terrorist members of Black September, responsible for the murders of the Americans Ambassador Cleo A. Noel and Deputy Chief of Mission Curtis G. Moore in Khartoum.⁸⁸ In the 1980s, it seemed like the relationship had improved as the United States funneled investments into Sudan to support the current ruling government. This investment was however to prevent the pro-soviet opposition to take power in Sudan, rather than an act of support for the actual government in power.⁸⁹ The United States also became the largest provider of foreign aid during this time as they were trying to prevent the destabilization of the country which would assist pro-Soviet groups from taking power.⁹⁰ Unfortunately, its efforts and resources to prevent a pro-Soviet government failed and in 1989 the Islamic militants, led by Omar al-Bashir, achieved a successful coup. Immediately after, the new government voiced its interest in becoming the centre for pan-Islamic military activities, welcoming militant Islamists from other Middle Eastern countries and providing diplomatic passports to Islamist activists from Algeria, Tunisia and Egypt.

⁸⁷ Global Policy Forum, <http://www.globalpolicy.org/security-council/tables-and-charts-on-the-security-council-0-82/subjects-of-un-security-council-vetoes.html>

⁸⁸ US Department of State, "US-Sudan Relations" *The Government of Sudan*. Accessed information September 20, 2009. http://sudan.usembassy.gov/ussudan_relations.html

⁸⁹ Meredith, 358.

⁹⁰ Daly, 236.

By 1991, Sudan had become an international haven for Muslim terrorists such as Osama bin Laden.⁹¹ Camps were set up to provide military training and government-sponsored conferences were hosted to discuss the Islamic “war on America.”⁹² The United States reacted by declaring Sudan “a state sponsor of terrorism,”⁹³ and followed this with economic sanctions and a freezing of diplomatic relations. One of the tensest moments in American-Sudanese relations was in 1998, when the United States bombed a pharmaceutical factory outside Khartoum in retaliation for the bombings of the embassies in Kenya and Tanzania by terrorists trained in Sudan. The United States believed that the factory was used by Osama bin Laden to develop chemical weapons, although this was later determined to be false.⁹⁴

When terrorist groups attacked the United States on September 11th, the Government of Sudan was quick to denounce all terrorist attacks and claim its support for the American war against terrorism. The Bush administration exploited this new willingness to collaborate to push for a peaceful settlement of the conflict between the government of Sudan and rebels in the South. The United States ended up playing an influential negotiating role together with Britain and Norway in ending the conflict in 2002.⁹⁵ The United States had a vested interest in stabilizing the region, not only to prevent terrorist activities, but also to ensure that the region would open up for foreign investment in the oil industry. American petroleum companies had repeatedly voiced their interest in the region and the possibilities of Sudanese oil enhancing the American economy.⁹⁶

As the conflict in southern Sudan was coming to an end, another conflict was intensifying in the western region of Sudan: Darfur. At first, the United States was criticized for not being willing to jeopardize its hard-fought peace in the South by properly responding to the Darfur conflict. But in September 2004, the United States became the first country to accuse the Government of Sudan of genocide in Darfur.⁹⁷ President George W. Bush then applied what some refer to as the “stick” approach which

⁹¹ Meredith, 590.

⁹² Ibid.

⁹³ African Affairs. Fact Sheet: U.S. Sanctions on Sudan. Washington, DC. April 23, 2008.

⁹⁴ Daly, 257.

⁹⁵ Meredith, 597.

⁹⁶ Williams and Bellamy (2005), 36.

⁹⁷ Williams and Bellamy (2005), 31.

excluded providing any carrots to encourage good behavior.⁹⁸ The Bush administration consistently worked on providing justice to the region, including supporting the unprecedented move of having the ICC undertake an investigation into the atrocities in Darfur. This approach to the Darfur conflict led to further deterioration in the inter-governmental relationship between the United States and Sudan.

The relationship between Sudan and the United States has improved somewhat with the change of government in the United States. In November 2008, Barak Obama was elected as the President of the United States and in January 2009 President George W. Bush ended his term. President Obama had made the Darfur conflict an election issue, and had been quite outspoken on the topic. Obama had completed interviews with organizations such as Save Darfur in which he spoke about the moral obligation of the United States to stop the genocide in Darfur.⁹⁹ However, the Obama administration decided to apply a more diplomatic approach to the Darfur conflict which included the “carrot and stick” approach instead of only the stick as under the leadership of President George W. Bush.¹⁰⁰ In April of 2009, Darfur activists and media began arguing that President Obama had adopted a policy of appeasement towards Sudan. In fact, the *Sudan Tribune* announced that the relationship between Sudan and the United States had started to normalize.¹⁰¹ Nonetheless, President Obama continued to refer of the conflict as a genocide and spoke of bringing justice to the region.¹⁰²

While the United States and other western countries froze their diplomatic relations with Sudan in the 1990s, China started to develop a friendlier relationship with the government of Sudan. The new approach reflected a renewed interest in Africa, which was also evidenced by increases in Chinese investments. From 1991 to 1999 Chinese investments in Africa grew from \$25 million to \$100 million USD. By 2006, Chinese investment had grown to \$1.25 billion USD and the trade relationship between China and Africa was estimated at \$55 billion USD (latest numbers available).¹⁰³ The focus of Chinese activities and interest in Africa has mainly been in petroleum and

⁹⁸ Kim Ghattas, “Obama opts for Compromise on Sudan” *BBC NEWS* (Published October 20, 2009).

⁹⁹ *Save Darfur Coalition*, “Video: Barak Obama on Darfur,” Posted November 26, 2007.

¹⁰⁰ Kim Ghattas, “Obama opts for Compromise on Sudan” *BBC NEWS* (Published October 20, 2009).

¹⁰¹ Nicolas Kristof, “Appeasement of Sudan?” *The New York Times* (Published April 27, 2009).

¹⁰² *Ibid*, 3.

¹⁰³ Akwe Amosu. China in Africa: “It’s (still) the Governance, Stupid.” *Foreign Policy in Focus*. (March 9, 2007) <http://www.fpif.org/fpiftxt/4068>

natural resources; an interest driven by China's resource scarcity and a growing need for oil.¹⁰⁴

The relationship China has established with Sudan over the last two decades is a reflection of China's interest in petroleum. While the United States and other western countries imposed economic sanctions and cancelled foreign investments in Sudan, China increased investments in Sudan, ignoring Sudan's support for militant Islamists. In 1996, China bought 40 percent of the Great Nile Petroleum Operating Company in Sudan, and started to assist Khartoum to develop exploration activities and the oil industry. At that time, it was the largest Chinese foreign investment.¹⁰⁵ Sudan, lacking of capital to extract its oil riches, welcomed the Chinese investments. China also invested in other large oil projects and companies in Sudan, including Sinopec that is building hundreds of miles of pipeline from Port Sudan to the Red Sea where China is also building a tanker terminal.¹⁰⁶ In 2008, it was estimated that Sudan exported almost 60 percent of its oil to China.¹⁰⁷ Sudan is dependent on its oil export as it accounts for 95 percent of its revenues.¹⁰⁸ In other words, it is a trade relationship from which both parties greatly benefit.

The oil revenues have been invested by the government of Sudan into updating and strengthening its military. In 2007, it was estimated that Sudan spent as much as 70 percent of its oil revenue to purchase and manufacture arms,¹⁰⁹ for which the main arms supplier was China. This finding was controversial, as the UN Security Council had imposed an arms embargo on Sudan for its role in the conflict as early as 2004. However, China has repeatedly denied that its arms agreements with Sudan have violated the arms embargo. In July 2008, the BBC documentary *Panorama* discredited this claim when

¹⁰⁴ Chris Alden, "China in Africa," *Survival* (Vol. 47, No. 3, Autumn 2005) 148.

¹⁰⁵ Alden, 148.

¹⁰⁶ James Kynge, *China Shakes the World: The Rise of a Hungry Nation* (London: Weidenfeld & Nicolson, 2006) 216.

¹⁰⁷ According to the Global Witness, Sudan and China released contradicting numbers regarding how much oil was extracted in Sudan. In result, the exporting numbers are only estimates.

¹⁰⁸ _____, "China, Japan have to press Sudan for transparency in oil figures," *Sudan Tribute* (Sept 17, 2009).

¹⁰⁹ Jeffery Gettleman, "Far Away from Darfur's Agony, Khartoum is Booming," *New York Times* (23 October, 2007).

they released video evidence that Chinese military vehicles and weapons were used by Sudanese troops in Darfur.¹¹⁰

It has been argued that China's close trading relationship with Sudan has given China some leverage to negotiate with Sudan regarding the conflict in Darfur.¹¹¹ According to Chinese officials, this is not a leverage that they would like to utilize. This position was well articulated by the Deputy Foreign Minister, Zhou Wenzhong, when he proclaimed, "business is business. We try to separate politics from business. I think the internal situation in Sudan is an internal affair, and we are not in a position to impose upon them."¹¹² This was also the approach maintained when the international community increased pressure on the Chinese government while it was preparing to host the Summer Olympics in Beijing in August 2008. Politicians, participants and viewers threatened to boycott the Olympics unless China used its close relationship with Sudan to bring a peaceful solution to the Darfur conflict.¹¹³ Some advocates for the boycott, such as Mia Farrow and Nicholas Kristof, dubbed it the "Genocide Olympics."¹¹⁴ They argued that China was using proceeds from its arms sales to Sudan to pay for the Olympics, and therefore individuals supporting the Olympics were also supporting the ongoing genocide in Darfur.¹¹⁵ Though the campaign to tarnish the Olympics in Beijing was somewhat successful, China did not sway under the pressure and continued its policy to not interfere within the domestic affairs of Sudan. The Chinese approach was well summed up by the President of China, Hu Jintao, who staged that "any solution in Darfur needs to respect the sovereignty of Sudan and be based on dialogue."¹¹⁶

2.6 Conclusion

The Darfur conflict represents a situation where the population is suffering at the hands of its own impenitent government. The Darfurian people need international aid and security, while the government of Sudan demands non-interference in its domestic

¹¹⁰ _____, "BBC News, "China rejects BBC Darfur Claims" BBC News World (published July 15, 2008)

¹¹¹ _____, "Chinese Leader boosts Sudan ties" BBC News World (published 2007/02/02).

¹¹² Kynge, 217.

¹¹³ _____, "Olympic Boycott calls "will fail"" BBC NEWS, May 18 2007.

¹¹⁴ Nicolas Kristof, "China's Genocide Olympics," The New York Times (Published January 24, 2008).

¹¹⁵ Ibid.

¹¹⁶ _____, "Chinese Leader boosts Sudan ties" BBC News World (Published 2007/02/02).

affairs. While discussing how to respond to the conflict, the Security Council has had to consistently balance state sovereignty with crimes against humanity. In particular, the Security Council has had to consider maintaining the powers of a foreign government when those powers were used to harm the populace. How can security be brought to the people of Darfur while still respecting the sovereign rights of the government of Sudan? Subsequent chapters explore how China and the United States have responded to this particular dilemma evolving in Darfur. A review of the responses will provide an insight into the contemporary discussion on the application of state sovereignty.

3. THE FIRST DARFURIAN CHALLENGE TO STATE SOVEREIGNTY: THE IMPLEMENTATION OF SANCTIONS

3.1 Introduction

When diplomatic efforts fail to end a threat to international peace and security, the Security Council can invoke Chapter VII of the UN Charter, which specifies two different types of measures. One is the “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations” (Article 41). This type of measure - a mandatory sanction - “is intended to apply pressure on a State or entity to comply with the objectives set by the Security Council without resorting to the use of force.”¹¹⁷ The use of force is the second type of measure that the Security Council can impose by evoking Chapter VII (Article 42). Article 41 and 42 provide the UN with two possible loopholes that can legally breach the right of non-intervention of sovereign states when they are found to be a threat to international peace and security.

Only twice during the Cold War did the Security Council evoked Chapter VII to implement sanctions.¹¹⁸ In 1965 the Security Council unanimously adopted a resolution to impose economic sanctions against the white minority government in Southern Rhodesia (today known as Zimbabwe) and in 1977, it unanimously imposed an arms embargo against the apartheid government in South Africa.¹¹⁹ The unanimous support within the Security Council reflected a strong political willingness to not only apply sanctions but to make them effective. It is important to note that there were also other sanctions imposed during this era, including arms embargos against the parties involved in the Palestine conflict and against the Portuguese Government, and economic sanctions imposed on South Africa. These were not implemented with the use of Chapter VII and consequently, they were non-binding to the member states of the UN.¹²⁰

¹¹⁷ The United Nations Sanctions Committees, “Security Council Sanctions Committee: An Overview” <http://www.un.org/sc/committees/> (accessed January 12, 2010)

¹¹⁸ Karen A. Mingst and Margaret P. Karns, *The United Nations in the 21st Century* (Boulder: Westview Press, 2007) 88-89.

¹¹⁹ Edward C. Luck, *UN Security Council: Practice and Promise* (New York: Routledge, 2006) 59-60.

¹²⁰ Ibid.

The use of sanctions by the Security Council increased rapidly after the end of the Cold War. In fact, the 1990s stood out so much that it has been referred to as “the sanctions decade.”¹²¹ Sanctions were implemented to deal with a wide array of threats to international peace and security, including aggressive state behaviour (Iraq); the overthrow of a democratic elected government (Haiti); human rights violations (Yugoslavia, Rwanda, and Somalia); civil wars (Angola, Sierra Leone, Ethiopia and Eritrea); and terrorist activities (Libya).¹²² The sanctions implemented against Iraq will undoubtedly stand out as one of the most controversial actions of that decade. Sanctions implemented unintentionally created a humanitarian disaster, which Saddam Hussein used to gain international sympathy, thus beginning a new dialogue on how to implement more effective sanctions.¹²³

By the end of the decade, new rules and procedures for implementation and monitoring had been established. The new approach was to review every individual sanction on a case-by-case basis and to develop the best measures for each case. The new approach resulted in more targeted sanctions such as freezing assets and travel bans for individuals that were found to be a threat to international peace and security.¹²⁴ While fine-tuning of the rules and procedures strengthened the sanctions regime, it also highlighted the need for political willingness of the UN member states, and particularly Security Council members, to adhere to decisions. This was better articulated by Edward C. Luck who argues that the most critical factor for sanctions to be successful is “the willingness and capacity of member states to implement the Council’s decision... Political will is not an independent variable, as it will be affected by perceptions of the stakes involved, the likelihood of success, and the motivations of others.”¹²⁵ In other words, sanctions can be designed to follow all the rules, but will only be successful if there is a willingness among all UN member states to comply. The Security Council can only request member states to comply with its decisions, but has no authority to enforce or police the activities of member states.

¹²¹ Mingst and Karns, 88.

¹²² Ibid, 88-89.

¹²³ Luck, 65-66.

¹²⁴ Ibid.

¹²⁵ Ibid, 66.

In the case of Darfur, the Security Council was slow to implement sanctions or react to violations of the sanctions as the members were divided in what constituted an appropriate response to the conflict. Nonetheless, the Security Council approved 10 resolutions between 2004 and 2009 that imposed sanctions on the parties involved in the conflict. The main four resolutions that this chapter will focus on are Resolutions 1556, 1564, 1591 and 1672. The remaining six resolutions (1651, 1665, 1713, 1779, 1841 and 1891) renewed the mandate of the Panel of Experts to oversee the implementation of the relevant sanctions that were first established with the approval of Resolution 1591. While reviewing the resolutions in detail, this chapter will mainly focus on the statements provided by China and the US after the votes in the Security Council. These statements provide insight into why China and the US supported or opposed the use of sanctions and infringements on the sovereignty of Sudan.

3.2 Resolution 1556

In May 2004, the Security Council released a statement through the Security Council President expressing its grave concern with the deteriorating situation in Darfur and called upon the parties to end the conflict. On July 3, after a visit by the Secretary General Kofi Annan to Darfur, the Government of Sudan and the United Nations released a Joint Communiqué. The Communiqué committed the UN to assist with humanitarian aid, mediation and the deployment of AU ceasefire monitors. The Government of Sudan committed to: provide access for humanitarian aid in Darfur; take measures to end human rights violations and ensure justice was brought to the violators; provide security to the people of Darfur and disarm the Janjaweed; and to resume peace settlement negotiations.¹²⁶ In the weeks that followed, the Security Council received reports about the worsening situation in Darfur and a new discussion began within the Security Council regarding what to do next. One of the actions discussed by the Security Council was to impose sanctions on the parties in the conflict, including the Government of Sudan. The draft resolution that was up for discussion would impose an arms embargo on the region, give the Government of Sudan 30 days to disarm the Janjaweed, and would impose harsh

¹²⁶ The United Nations, Joint Communiqué between the Government of Sudan and United Nations on the Occasion of the Visit of the Secretary General to Sudan June 29-July 3, 2004 http://www.un.org/news/dh/sudan/sudan_communique.pdf (accessed January 12, 2010)

sanctions if these requirements were not met. During the discussions, China strongly refused to discuss a possible breach of Sudan's sovereignty by imposing sanctions, while the United States argued that the Darfurians need to be protected and that the responsibility was with Government of Sudan.¹²⁷ To give the Government of Sudan the responsibility for the protection of the people of Darfur was an oxymoron as the UN Commission on Human Rights had already found the government to be one of the perpetrators.

In the end the language in the draft resolution was softened, and Resolution 1556 was adopted by the Security Council July 30, 2004. Resolution 1556 determined that the Darfur conflict was a threat to international peace and security and to the stability in the region, and gave the Security Council the authority to impose Chapter VII. By imposing Chapter VII in Resolution 1556, the Security Council;

“demands the Government of Sudan fulfill its commitments to disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out human rights and international humanitarian law violations and other atrocities, and further requests the Secretary-General to report back in 30 days, monthly thereafter, to the Council on the progress or lack thereof by the Government of Sudan on this matter and express its intention to consider further actions, including measures provided for in Article 41 of the Charter of the United Nations on the Government of Sudan...”¹²⁸

The Resolution also asked all states to prevent sale or supply of arms and military equipment to the parties in the conflict. The softness of the language in the Resolution is evident. The resolution does not directly mention imposing explicit sanctions, but rather included less offensive language regarding “measures provided in Article 41.”¹²⁹ In effect, there was no obvious serious threat for the Government of Sudan to not apply the requirements in Resolution 1556.

While the resolution was approved with 13 votes in favor, China along with Pakistan, abstained from the vote to show disapproval with the invoking of Article 41. After the vote, Zhang Yishan of China spoke directly to China's decision to abstain:

¹²⁷ Williams, Paul D. and Alex J. Bellamy. “The UN Security Council and the Question of Humanitarian Intervention in Darfur.” *Journal of Military Ethics*. Vol. 5:2 (2006) 150.

¹²⁸ *The United Nations Security Council*, “S/RES/1556” (July 30, 2004), 3.

¹²⁹ Williams, Paul D. and Alex J. Bellamy. “The Responsibility to Protect and the Crisis in Darfur.” *Security Dialogue*. Vol. 36:1 (March 2005) 32.

“The draft resolution proposed by the United States and other countries, although some amendments have been made to it, still includes mandatory measures against the Sudanese Government. As all the parties are speeding up diplomatic efforts, such measures cannot be helpful in resolving the situation in Darfur and may even further complicate it. China had hoped that the sponsors of the draft resolution would have taken seriously into consideration China’s concerns and made the appropriate adjustments so as to arrive at a consensus in the Security Council. Regrettably, that proposal was not accommodated or responded to. We can therefore only abstain in the voting on this draft resolution in the Security Council.”¹³⁰

Mr. Zhang Yishan spoke directly about China’s concerns with imposing measures in the conflict. According to Mr. Zhang, China felt that the measures would hinder, rather than assist finding a resolution to the severe humanitarian situation. Zhang argued that Sudan had been making improvements to the situation in Darfur, and the international community should not halt these efforts. Furthermore, China believed that the Government of the Sudan has the “primary responsibility for resolving the Darfur situation and that the international community should make every effort to assist the Government of the Sudan.” To be able to reach a comprehensive agreement with the Government of Sudan, the agreement needed to be based on “respect for the Sudan’s sovereignty and territorial integrity.”¹³¹

Ambassador Danforth, speaking on behalf of the United States, was irritated that the Security Council was too concerned with language rather than trying to act swiftly and decisively. A week before the approval of Resolution 1556, the American Congress passed a resolution referring to the Darfur atrocities as a genocide. In speaking in reference to these atrocities, Ambassador Danforth was clear that the “responsibility for this disaster lies squarely with the Government of Sudan.”¹³² In countering arguments presented by China, Ambassador Danforth argued that the Government of Sudan had not lived up to commitments made on July 3, 2004 to ensure humanitarian assistance, protection of human rights, and political settlement in Darfur. In result, Ambassador Danforth argued:

“It is time to start the clock ticking on the Government of Sudan... The resolution, in stern and unambiguous terms, puts the Government of Sudan on notice that it

¹³⁰ The United Nations Security Council, “S/PV.5015” (July 30, 2004) 2.

¹³¹ Ibid.

¹³² Ibid, 4.

must fulfill the commitments it made on 3 July. Sudan must know that serious measures – international sanctions – are looming if the government refuses to do so.”¹³³

American support for Resolution 1556 was strongly voiced by Ambassador Danforth. The United States justified breaching the sovereignty of the Government of Sudan if it did not comply with the resolution requirements. However, Ambassador Danforth still wanted to make it clear that “the purpose of this resolution is to relieve the suffering of Darfur, not to punish Sudan.”¹³⁴

3.3 Resolution 1564

While it had been difficult to get an agreement on Resolution 1556, it seemed to be increasingly more difficult to decide what to do when the 30-day deadline had passed. Jan Pronk, the Special Representative Secretary General of the United Nations in Khartoum, presented the Secretary General Report on Sudan to the Security Council on September 2. Mr. Pronk reported that although the government forces had not breached the ceasefire, the government had failed to disarm the Janjaweed.¹³⁵ Furthermore, Pronk reported, that there had been “no systematic improvement of people’s security and no progress on ending the impunity”¹³⁶ In the face of inaction, Pronk voiced concern with the lack of protection for the people in Darfur. In finding the Government of Sudan in breach of Resolution 1556, the Security Council had to decide how to recognize the violation and what measures to impose.

The response to Sudan’s failure to comply was put forth in a draft resolution sponsored by the United States, Germany, Romania and the United Kingdom. Resolution 1564 was approved on September 18 with 11 votes in favour and four abstentions. The resolution explicitly declared that the Government of Sudan failed to meet its previous commitment in the July 3 Communiqué and did not comply with Resolution 1556. In result, the Security Council decided to,

“...consider taking additional measures as contemplated in Article 41 of the Charter of the United Nations, such as actions to affect Sudan’s petroleum sector

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Williams and Bellamy (2006), 152.

¹³⁶ Williams and Bellamy (2005), 33.

and the Government of Sudan or individual members of the Government of Sudan, in order to take effective action to obtain such full compliance or full cooperation.”¹³⁷

The resolution did not implement sanctions against the Government of Sudan for its failure to comply. The language in Resolution 1564 was stronger than in Resolution 1556 and mentions targeted sanctions that will be made against the Government of Sudan and individuals if it fails to act quickly. Although the resolution failed to punish the Government of Sudan, it did establish an international commission of inquiry to investigate reports of violations of international humanitarian law and human rights law in Darfur. The resolution also reaffirmed the Security Council’s commitment to sovereignty, unity, territorial integrity and the independence of Sudan.”¹³⁸

China abstained from the vote on Resolution 1564 along with Algeria, Pakistan and Russia. The decision to abstain was to show dissatisfaction with the drafted resolution. Mr. Wang Guangya of China repeated the arguments from the previous discussion on Resolution 1556, insisting that the only possible resolution to the Darfur conflict was to have a political settlement. Furthermore, the Security Council should focus on “encouraging the Sudanese Government to continue to cooperate, rather than doing the opposite.”¹³⁹ This position on sanctions against the Government of Sudan was, according to Mr. Wang Guangya, the Chinese standard policy on all sanctions as it is believed that sanctions only make problems “even more complicated.”¹⁴⁰

While it was expected that the United States would take a strong stance on imposing sanctions against the Government of Sudan, the United States surprised observers by taking a moderate position.¹⁴¹ Ambassador Danforth on behalf of the United States argued that the Government of Sudan was to blame for the “largest humanitarian disaster in the world today.” It was a disaster “fabricated by the Government –intent on revenge, intent on persecution, intent on breaking the spirit of an entire people – as an over-reaction to a rebellion.”¹⁴² In demanding a resolution to the conflict, Ambassador

¹³⁷ The United Nations Security Council, “S/RES/1564” (September 18, 2004) 4.

¹³⁸ Ibid, 1.

¹³⁹ The United Nations Security Council, “S/PV.5040” (September 18, 2004) 4.

¹⁴⁰ Ibid, 5.

¹⁴¹ Bellamy and Williams (2006), 154.

¹⁴² The United Nations Security Council, “S/PV.5040” (September 18, 2004) 5-6.

Danforth argued that, “the Government of Sudan has the responsibility to end the tragedy in Darfur.” In other words, the United States was willing to blame the Government of Sudan for the conflict in Darfur and insisted that the responsibilities to end the conflict were with the Government of Sudan.

The statements made by Ambassador Danforth resulted in an angry response from Elfatih Mohamed Ahmed Erwa, speaking on behalf of Government of Sudan, who argued that the targeting of the Government of Sudan was part of a political scheme led by the United States which believed “it was the sole conscience of the world.”¹⁴³ According to Mr Erwa, the United States should not point fingers at others because it was responsible for injustice in several countries, including Iraq. Ambassador Danforth, not planning to speak again decided to respond to these allegations. Ambassador Danforth argued that the Government of Sudan had missed the point of the deliberations, which was how to protect the people of Darfur who were under attack by the Government of Sudan. It was evident that the American approach with regards to imposing sanctions against the Government of Sudan impacted inter-governmental relations, and that the tensions between the two countries had increased.

3.4 Resolution 1591

It was six months before the Security Council adopted another resolution to follow up on the threats set forth in Resolution 1564 in September 2004. This was not a reflection of an improving situation in Darfur. Already within two weeks of the approval of resolution 1564, Mr. Pronk could report to the Security Council that there had been “no systematic improvement of people’s security and no progress on ending impunity.”¹⁴⁴ By November, Mr. Pronk reported a deteriorating situation and increasing tensions.¹⁴⁵ In February, the Security Council met to review the report released by the International Commission of Inquiry (COI) established by Resolution 1564. In its report, COI found the Government of Sudan and Janjaweed were responsible for serious violations of international human rights and humanitarian law, amounting to crimes under international law. Furthermore, the report argued that these violations were so widespread

¹⁴³ Ibid, 7.

¹⁴⁴ The United Nations Security Council, “S/PV. 5050” (October 5, 2004).

¹⁴⁵ The United Nations Security Council, “S/PV. 5071” (November 4, 2004).

and systematic that they “may constitute crimes against humanity.”¹⁴⁶ COI did not find evidence that the Government of Sudan was implementing genocide against the people of Darfur, but questioned the genocidal intent of some government officials. These findings were supported by Mr. Pronk,¹⁴⁷ while China urged the international community to ignore the report as its inquirers had failed to receive a VISA invitation from the Government of Sudan to enter into Darfur.¹⁴⁸ Though the inquiry’s findings were somewhat controversial, they did put more pressure on the Security Council to implement sanctions.

Resolution 1564 specified the petroleum sector in Sudan as a sanctions target if the Government of Sudan was not in compliance with its commitments to the Security Council. The United States strongly advocated that an oil embargo be included in the resolution, but this was quickly rejected by China and Russia.¹⁴⁹ Resolution 1591 was adopted on March 29, 2005 with China, Russia and Algeria abstaining from the vote. The resolution did not include an oil embargo, but rather implemented targeted sanctions against individuals “who impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities.”¹⁵⁰ The individuals would be subject to travel bans or a freeze of their financial assets and economic resources. The resolution did not name specific individuals, but established a sanctions committee to decide on individuals to be targeted and also to oversee the implementations of the sanctions. The Secretary General was also to appoint a Panel of Experts to travel regularly to Darfur and other locations in Sudan to assist the committee to oversee the implementation of the sanctions and to brief the committee. The committee would in return report regularly to the Security Council.¹⁵¹ The resolution also renewed its request to all member states to prevent sale or supply of arms and military equipment to all parties in the conflict. This resolution did not specifically target the Government of Sudan, and found that all parties to the conflict had failed to comply with previous commitments and resolutions.

¹⁴⁶ Human Rights Council, 19.

¹⁴⁷ United Nations Security Council, “S/PV. 5120” (February 8, 2005).

¹⁴⁸ Bellamy and William (2006), 155.

¹⁴⁹ Ibid.

¹⁵⁰ The United Nations Security Council, “S/RES/1591” (March 29, 2005) 4.

¹⁵¹ Ibid., 3-4.

Chinese Representative Wang Guangya, reiterating statements previously made in the Security Council, argued that the Chinese had “always taken a cautious approach to the issue of sanctions.” In the case of Darfur, “China has repeatedly stressed that the Security Council should exercise the greatest caution with respect to “measures” that could make negotiations more difficult and have a negative impact on the peace process.”¹⁵² The Government of Sudan concurred with the Chinese statements, arguing that the Security Council had adopted a series of unwise resolutions that “might make the situation worse.”¹⁵³ Mr. Erwa, speaking on behalf of Sudan, verbally accused the United States Congress of being guilty of developing a resolution that was ignorant of African peoples and history.¹⁵⁴ The representative from the United States, Mr. Holiday, had originally not intended to make a statement, but after Mr. Erwa presented the Sudanese statement, he decided to speak. Mr. Holiday defended the United States Congress by adding that Congressmen are quite educated on the topic of Darfur, and that “they and all of us in the United States hope that this resolution will contribute to an end to the violence in Darfur.”¹⁵⁵

3.5 Resolution 1779

It was a long awaited resolution when 1779 was finally adopted on April 25 2006. The resolution had been delayed because of difficulties the Security Council had with the establishment of the sanctions committee that was established by the previous resolution. By January 2006, the committee had largely been inactive and had not developed guidelines for its own operation.¹⁵⁶ The Panel of Experts had managed to complete their mandate, but had found the Government of Sudan and other countries uncooperative in providing the necessary information. The Panel of Experts documented their findings in a report submitted to the sanctions committee by the end of January 2006. The Panel of Experts’ report found several countries (Sudan, Libya, Chad and Eritrea) not complying with Security Council resolutions. In an unprecedented move to a routine procedure, China and Qatar decided to block the release of the Panel of Experts’ report to the

¹⁵² The United Nations Security Council, “S/PV.5153” (March 29, 2005) 5.

¹⁵³ Ibid.

¹⁵⁴ Ibid., 6.

¹⁵⁵ Ibid., 7.

¹⁵⁶ Security Council Report “Sudan/Darfur January 2006” (Last accessed September 12, 2010)

Security Council.¹⁵⁷ After several weeks of discussions, the sanctions committee finally released the report to the Security Council in March,¹⁵⁸ and provided a list of individuals in violation of Resolution 1591. Of the names put forth to the Security Council three of the individuals were leaders from rebel groups within Darfur and only one individual was a Sudanese government official. Resolution 1779 imposed travel restrictions and froze the assets of four Sudanese leaders: Major General Gaffar Mohamed Elhassan, Commander of the Western Military Region for the Sudanese Air Force; Sheikh Musa Hilal, Paramount Chief of the Jalul Tribe in North Darfur; Adam Yacub Shant, Sudanese Liberation Army Commander; and Gabril Abdul Kareem Badri, National Movement for Reform and Development Field Commander.¹⁵⁹

Resolution 1779 was adopted by a vote of 12 with China, Qatar and Russia abstaining. Mr. Wang Guangya repeated China's stance on imposing sanctions explaining that "sanctions cannot reach expected results."¹⁶⁰ China seemed particularly concerned with the fact that the Security Council decided to vote on this resolution when the peace negotiations were so close to a major deadline. In this regard, the Chinese representative argued that the Security Council,

"...should focus on promoting and facilitating, rather than affecting and interfering in, the peace talks. If, as a result of the Security Council's sanctions resolution, any party to the Abuja talks has second thoughts about signing such a peace accord, the conflict in the Darfur region will inevitably be prolonged or even intensify. The Security Council would have to assume responsibility for such an eventuality."¹⁶¹

Nonetheless, Mr. Wang Guangya wanted to clarify that China was still, just as all the other members, concerned about the Darfur conflict and hoped to see the situation neutralized as soon as possible. China believed that a political settlement was the only hope for peace in Darfur, and expressed its concern that the Security Council was implementing resolutions that went against this goal. Mr. Wang Guangya also took the opportunity to make a statement on the discussions that occurred in the Sanctions Committee. According to the Chinese official, it was the Panel of Experts' fault that the

¹⁵⁷ Security Council Report "Update Report No. 3: Sudan/Darfur" January 13, 2006.

¹⁵⁸ Security Council Report "Sudan/Darfur March 2006" (Last accessed September 12, 2010)

¹⁵⁹ The United Nations Security Council, "S/RES/1672" (April 25, 2006).

¹⁶⁰ The United Nations Security Council, "S/PV.5423" (April 25, 2006).

¹⁶¹ Ibid.

report had not been released as it had not provided the committee with enough evidence for their findings. As a result, China had no choice but to block the release of the report and abstain from the vote on this resolution.¹⁶²

The United States countered the argument that the resolution would hamper the peace negotiations, stating that it would demonstrate that the Security Council was “serious in its efforts to restore peace and security in the region. Far from interfering in the peace process in Abuja, it would strengthen the process.” Furthermore, the American Ambassador Bolton argued that the Security Council was taking an important first step in “fulfilling its responsibilities under several resolutions respecting Darfur that it has adopted.”¹⁶³

3.6 Sanctions Discussions Continues

Since the approval of Resolution 1779 and the renewal of the Panel of Experts, there have been no other sanctions implemented by the Security Council against the parties involved in the Darfur Conflict. According to the watchdog, Security Council Reports, a non-governmental organization initiated by the UN to oversee Security Council activities, sanctions had been discussed several times unofficially among members of the Security Council. Harsher sanctions were discussed repeatedly as a tool that could be introduced to pressure parties of the Darfur Conflict that were unwilling to take part in the peace negotiations. This approach was strongly advised against by African members of the Security Council, and no resolution was drafted.¹⁶⁴ The Sanction Committee had been somewhat active, and added two additional names to the list of individuals subject to travel restrictions and asset freezes in August 2007.¹⁶⁵ The Government of Sudan also tried to add names from the rebel group JEM to the list in February 2008, but was turned down by the Sanction Committee because of lack of evidence to support their proposal.¹⁶⁶ The Panel of Experts that was established by Resolution 1591 was renewed with Resolutions 1651 (2005), 1665 (2006) 1713 (2006),

¹⁶² Ibid, 3-4.

¹⁶³ Ibid, 2.

¹⁶⁴ Security Council Report “Sudan/Darfur December 2007” (Last accessed September 12, 2010)

¹⁶⁵ The United Nations Security Council, “SC/909: Security Council Committee Concerning Sudan Updates Information on consolidated Travel Ban, Assets Freeze” (August 8, 2007).

¹⁶⁶ Security Council Report “Sudan/Darfur April 2008” (Last accessed September 12, 2010)

1779 (2007), and 1814 (2008). No official statements were made by China or the United States during the Security Council vote to renew the Panel of Experts. Since it was first established in 2005, the Panel has published six official reports.¹⁶⁷ A particularly interesting point mentioned in the Panel of Experts' reports and also in the media has been the continuous breaches of the arms embargo.

The arms embargo established by Resolution 1564, and adopted September 2004, requested all member states of the UN to prevent sale or supply of arms and military equipment to the parties in the conflict. Though China has continued to argue its adherence to the resolution, media investigations and the Panel of Experts' reports have found findings contradicting the Chinese statements. In July 2008, the BBC documentary Panorama discredited this claim when they released video evidence that Chinese military vehicles and weapons were used by Sudanese troops in Darfur.¹⁶⁸ The Panel of Experts' reports released in November 2008 and October 2009 also support these findings. The panel documents Chinese manufactured arms and ammunition with production stamps as late as 2007 and 2008 within the Darfur region. The report also states that the panel had tried to cooperate with the Government of China "to trace the chain of ownership" for the sales to the Government of Sudan, but had received no official responses to its inquiries.¹⁶⁹

3.7 Conclusion

China and the United States have pursued a particular pattern in all their official statements made following the vote of a resolution threatening or implementing sanctions against the parties of the Darfur conflict. Though neither abandoned the conclusion that the responsibility for solving the conflict remaining with the Government of Sudan, both took a different approach on whether to implement sanctions. China never supported the resolutions threatening the use or implementation of sanctions against the Government of

¹⁶⁷ All the Panel of Experts Reports are available online at <http://www.un.org/sc/committees/1591/reports.shtml>

¹⁶⁸ _____, "BBC News, "China rejects BBC Darfur Claims" *BBC News World* (published July 15, 2008)

¹⁶⁹ United Nations "S/2009/562: Final report of the Panel of Experts submitted in accordance with paragraph 2 of Security Council resolution 1841 (2008)" October 29, 2009. Found online at: <http://www.un.org/sc/committees/1591/reports.shtml>

Sudan, and was silent on whether it supported sanctions being implemented on other parties of the Darfur conflict. In essence, the main concern was the possible sanctions to be implemented against the Government of Sudan as the official head of a sovereign state. Taking this “cautious” approach, the Chinese officials repeated at each vote, the Chinese standard policy with regards to sanctions. In the case of Darfur, the Chinese officials were concerned with the negative effects the sanctions could have on a possible political settlement. It is also important to note that China never accused the Government of Sudan of being in violation of the Security Council resolutions or of being one of the perpetrators of the atrocities in Darfur. The Chinese lack of support for the imposed sanctions was also reflected in the continuous violation of the arms embargo.

The United States not only supported all the resolutions threatening the use or implementation of sanctions, but was one of the sponsors of all the drafted resolutions put forth. In fact, the drafted resolutions proposed by the United States and others often suggested stronger sanctions, such as the establishment of an oil embargo. The United States repeatedly blamed the Government of Sudan for being responsible for the atrocities in Darfur, while also giving the government the responsibility of ending the conflict. However, although obviously willing to support sanctions, the United States never actually threatened the state sovereignty of Sudan.

4. THE SECOND DARFURIAN CHALLENGE TO STATE SOVEREIGNTY: THE REFERRAL TO THE INTERNATIONAL CRIMINAL COURT

4.1 Introduction

The establishment of the International Criminal Court (the ICC) has been described as the “most ambitious initiative in the history of international law.”¹⁷⁰ The Rome Statute gave the ICC the jurisdiction to prosecute any individual guilty of the most profound and serious crimes, including genocide, crimes against humanity, war crimes and crimes of aggression. It was the first time jurisdiction was given to an international court to prosecute any individual outside of his or her domestic judicial system. According to Totten and Tyler, the Rome Statute was a “new and marked infringement on the principle of State Sovereignty.”¹⁷¹ It was an infringement because it ended the perceived notion that states and their actors had immunity to perform whatever activities they wanted within their own territories. All state actors, including a sitting head, could be investigated if it was perceived that they had committed serious violations of humanitarian international law. However, the ICC does not currently have jurisdiction within all the states. According to the Rome Statute, the ICC can only investigate a case if it has been referred to them by a state party or by the UN Security Council. As of January 2010, there are 110 signatories, and another 38 countries that are still in the process of ratifying the Rome Statute. Any one of the 110 signatories can refer a case to the ICC, including against a national of a non-state party if the crime was committed within the territory of a state-party. Furthermore, if a case is referred to the ICC by the Security Council, crimes that occur within the borders of a non-party state can be tried and it will be binding to all UN members. The Security Council can refer a case to the ICC if the ICC finds the case to be a threat to international peace and security it can evoke Chapter VII. This is significant because the ICC thus can challenge the sovereignty

¹⁷⁰ Karen A. Mingst and Margaret P. Karns, The United Nations in the 21st Century (Boulder: Westview Press, 2007), 202.

¹⁷¹ Christopher D. Totten and Nicholas Tyler, “Arguing for an integrated Approach to Resolving the Crisis in Darfur: The Challenge of Complementarity, Enforcement, and Related Issues in the International Criminal Court,” The Journal of Criminal Law & Criminology (Vol. 98, No. 3, 2008) 1078.

of any state as it can theoretically obtain jurisdiction to investigate a case within the boarder of any state.

Since the establishment of the ICC July 2002, it has opened four cases for investigation. Three of the cases were referred to the ICC by their own territories; Uganda, the Congo and the Central African Republic. The last case was referred by the Security Council March 31 2005, who approved Resolution 1593 that requested the ICC to investigate possible violations of humanitarian international law in Darfur.¹⁷² The referral was not approved by the Government of Sudan; a non-state party of the Rome Statute. In the immediate aftermath of the approval of Resolution 1593, the Security Council released official statements in response to their votes and their stance on the ICC. The failure of the Government of Sudan to adhere to Resolution 1593 also pushed the Security Council to reluctantly release a presidential statement in June 2008. Members of the Security Council also released several statements after the ICC prosecutor delivered its regular reports to the Security Council.

This chapter reviews the arguments made by China and the United States during the discussions that took place regarding the adoption of Resolution 1593, the release of the Presidential Statement and after the ICC reports to the Security Council. The review of the statements provides insight into the stance China and the United States have taken towards the ICC as a challenge towards state sovereignty.

4.1 Resolution 1593

The earlier approval of Resolution 1564 is an important predecessor to Resolution 1593. Resolution 1564 was adopted by the Security Council on September 18, 2004. The primary purpose of the resolution was to respond to the Government of Sudan's failure to comply with Resolution 1556 that demanded that Sudan disarm and apprehend the Janjaweed leaders, and try to end the violations of human rights abuses in Darfur. Though some were expecting Resolution 1564 to impose sanctions against Sudan, the resolution only voiced a threat of the possible use of sanctions. The resolution did however establish an international Commission of Inquiry (COI) to investigate reports of violations of

¹⁷² The International Criminal Court, "Situations and Cases," International Criminal Court Website, accessed May 20, 2010. <http://www.icc-cpi.int/Menus/Go?id=ff9939c2-8e97-4463-934c-bc8f351ba013&lan=en-GB>

international humanitarian law in Darfur, as discussed earlier. In January 2005, COI released its findings that found the Government of Sudan and the Janjaweed responsible for serious violations of international humanitarian law, including possible “crimes against humanity.”¹⁷³ Though the report did not find the occurrence of genocide, it suggested that “in some instances individuals, including government officials, may commit acts with genocidal intent.”¹⁷⁴ The COI argued that these claims should be investigated further by a competent court. The Commission recommended that the court should be the ICC as they argued that the Sudanese judicial system was unwilling and unable to prosecute the perpetrators.¹⁷⁵ The accusations from the COI were very serious and the Security Council needed to react. In the next two months the Security Council would debate the appropriate measure to take in regards to the Commission’s findings.

There had never been a referral to the ICC from the Security Council before, and the likelihood of a referral looked somewhat bleak with three of the permanent members¹⁷⁶ not being parties to the Rome Statute. One of the most vocal opponents of the ICC among the permanent members has been the United States. In the early and mid 1990s, the United States was initially supportive regarding the development of an international court. The US was also very supportive of the establishment of the International Tribunals for Yugoslavia and Rwanda.¹⁷⁷ However, the United States did not approve of the Rome Statute that was adopted by the UN General Assembly in July 1998. The main issue to which the United States objected was the ICC’s prosecution of an individual outside the jurisdiction of the individual’s nationality.¹⁷⁸ The United States was also concerned about the ICC judges not being accountable to a higher authority, and that the Security Council would have no veto powers over the ICC investigations. Another concern was how the ICC could potentially have a “chilling effect on America’s

¹⁷³ Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1546 of 18 September 2004, UN Doc. S/2005/60 (25 January 2005), 3. (Document can be found at: http://www.un.org/News/dh/sudan/com_inq_darfur.pdf)

¹⁷⁴ Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, 4.

¹⁷⁵ Cécile Aptel Williamson, “Justice Empowered or Justice Hampered: The International Criminal Court in Darfur,” African Security Review (Vol. 15, No. 3, 2006) 22.

¹⁷⁶ The non party states of the China, Russia and the United States.

¹⁷⁷ Judith Kelley, “Who Keeps International Commitments and Why? The international Criminal Court and Bilateral Nonsurrender Agreements,” American Political Science Review (Vol. 101, No. 3, August 2007) 575.

¹⁷⁸ Ibid.

willingness to project power in the defence of its interests.”¹⁷⁹ In other words, the ICC could potentially curb certain American activities abroad.

The dissatisfaction within the Bush Administration was evident given that the US started a campaign counter to the ICC in July 2002, only a month after its establishment. President George W. Bush announced that the United States would sign bilateral non-surrender agreements with state parties to ensure that American nationals could not be prosecuted within the borders of state parties. The Bush administration went so far as to withhold aid and investment funds for over 20 developing countries until the countries signed the non-surrender agreements.¹⁸⁰ President Bush also made it law that Americans were forbidden to pursue any cooperation with the ICC under the Protection Act of 2002. The Protection Act also prohibited the United States to participate in peacekeeping operations, unless a non-surrender agreement would be signed.¹⁸¹ All these activities were targeted to undermine the role and the legitimacy of the ICC.

Taken into consideration the United States’ position with regards to the Darfur conflict and the possible referral to the ICC, it was no surprise to see that the United States was not supportive of this possibility. Rather, the United States argued that the UN and the African Union would jointly establish an ad-hoc tribunal to be modeled after the UN war-crimes court in Tanzania.¹⁸² This proposal was not readily accepted by the other members of the Security Council or interest groups within the United States. Colleagues in the Security Council argued it would be too costly and time consuming, while American interest groups were calling for stronger and appropriate measures be taken to what the President himself had recognized as genocide.¹⁸³

The United States was not the only permanent member within the Security Council to argue for a different option to that of the ICC. China, also not party to the Rome Statute, argued for the complete dismissal of the possibility of an ICC referral. Much like the United States, China had also been discontent with the Rome Statute approved in 1998. China did not embrace the idea of possible inference within the

¹⁷⁹ Alexis Arieff, Rhoda Margesson, and Marjorie Ann Browne, “International Criminal Court Cases in Africa: Status and Policy Issues,” Congress Research Service Report for Congress (July 14, 2009) 7.

¹⁸⁰ Samantha Power, “Court of First Resort,” New York Times (Published Feb 10, 2005).

¹⁸¹ Kelley, 575.

¹⁸² Victor Peskin, “The International criminal Court, the Security Council and the Politics of Impunity in Darfur,” Genocide Studies and Prevention (Vol. 4, No. 3, December 2009) 319.

¹⁸³ Power, 2005.

domestic jurisdiction of a state. China was also concerned with the vague definition of the range of different crimes within the jurisdiction of the ICC. China saw a politicized and biased court that would define crimes differently from itself.¹⁸⁴ Though China was discontent with the Rome Statute, it decided to collaborate with the ICC and continue to participate as an observer state in regular meetings of the Assembly of State Parties of the Rome Statute.¹⁸⁵

Chinese support for the ICC was also reflected in a statement released by Chinese Foreign Affairs October 2003. In the statement, The Chinese government voiced its support for the establishment of an “independent, impartial, effective and universal” ICC that is “conducive to international peace and security.”¹⁸⁶ Nonetheless, China warned that the Court should strictly follow the principle upon which the Court was first established, namely the principle of complementarity. The principle of complementarity is the notion that the ICC is to promote the domestic judicial system and work with countries to prosecute criminals within their own judicial systems. The court is to prosecute only the gravest international crimes and adhere to the provisions of the UN Charter. Lastly, the Court should be objective and without political biases. The statement ended by iterating support for the ICC and the rule of law:

“In the future, the Chinese Government will, as an observer state, continue to adopt a serious and responsible attitude to follow carefully the progress and operation of the International Criminal Court. China is willing to make due contributions to the realization of the rule of law in the international community.”¹⁸⁷

The Statement provided by Chinese Foreign Affairs makes the impression that China is interested in supporting the ICC even though it did not want to approve of all the text within the Rome Statute.

The Chinese approach to the ICC in general was more accommodating and understanding than the rather hostile approach taken by the United States. Nonetheless, in

¹⁸⁴ _____, “Fact Sheet: China and the International Criminal Court,” Amnesty International (July 19, 2007).

¹⁸⁵ Bing Binga Jia, “China and the International Criminal Court: Current Situation,” Singapore Year Book of International Law and Contributions (Vol. 10, 2006) 7.

¹⁸⁶ Ministry of Foreign Affairs of the People’s Republic of China, “China and the International Criminal Court,” Ministry of Foreign Affairs of the People’s Republic of China (Published October 28, 2003). <http://www.mfa.gov.cn/eng/wjb/zzjg/tyfls/tyfl/2626/2627/t15473.htm>

¹⁸⁷ Ibid.

response to the COI's recommendations, China urged the Security Council not to accept the referral of the case to the ICC as China believed the domestic courts in Sudan were capable of prosecuting the perpetrators and bringing justice to the people of Darfur.¹⁸⁸ China gained support from Russia among the permanent members of the Security Council, while Britain and France argued that the referral was "non-negotiable."¹⁸⁹ With the permanent members of the Security Council pulling in three different directions, a resolution was unlikely. However, after two months of intense debating, the Security Council adopted Resolution 1593, as a Chapter VII resolution, on March 31 2005. By evoking Chapter VII, the Resolution referred the Darfur situation to the prosecutor of the ICC. The resolution urged the Government of Sudan to cooperate fully with the prosecutor and the court, even though Sudan is not a signatory of the Rome Statute. The resolution also invited the prosecutor to report back to the Security Council in three months and thereafter every six months. Interestingly, the resolution decided that other nationals working within Sudan would be subjected to only the jurisdiction of the contributing state and would not be investigated by the ICC.¹⁹⁰ The resolution was adopted by eleven votes in favour with four abstentions, including Brazil, China, Russia and the United States.

Immediately after the vote, the official representative for the United States Mr. Patterson explained that the United States abstained from voting because of its position of "long-standing and firm objections and concerns regarding the ICC."¹⁹¹ The main reason for this position is explained by Mr. Patterson;

"The United States continues to fundamentally object to the view that the ICC should be able to exercise jurisdiction over the nationals, including government officials, of States not party to the Rome Statute. That strikes at the essence of the nature of sovereignty."¹⁹²

In essence, the United States was not willing to let the ICC challenge the principle of state sovereignty. Moreover, the United States continued to argue that the Rome Statute

¹⁸⁸ Jia, 11

¹⁸⁹ Alex J. Bellamy and Paul D. Williams, "The UN Security Council and the Question of Humanitarian Intervention in Darfur," *Journal of Military Ethics* (Vol.5, No. 2, 2006), 155.

¹⁹⁰ The United Nations Security Council, *S/RES/1593* (March 31, 2005) 1-2.

¹⁹¹ The United Nations Security Council, *S/PV.5158* (March 31, 2005) 3.

¹⁹² *Ibid*, 3.

is flawed by the possibility that non-party state nationals can be prosecuted by the ICC. The United States does recognize that this resolution did take into consideration the American concerns and did provided for “clear protections for United States persons. The resolution ensured that no United States person supporting the operations in the Sudan will be subject to investigation or prosecution because of this resolution.”¹⁹³ Speaking of these concerns, Mr. Patterson reflected an obvious antagonism as he warned about the possibility of limiting of American collaborative measures because of the referral to the ICC as all government officials of the United States are restricted by law from providing any assistance and support to the ICC. Furthermore, Mr. Patterson warned that the United States would not hesitate to withhold funding or take other actions if the resolution to protect American persons from the ICC would not be respected. Nonetheless, with regards to the Darfur conflict, Mr. Patterson notes that it is important for the United States that there is justice brought to “those responsible for the crimes and atrocities that have occurred in Darfur and ending the climate of impunity there. Violators of international humanitarian law and human rights law must be held accountable.”¹⁹⁴

China, also abstaining from the vote, presented their reasoning for their position. Mr. Wang argued that the Security Council ignored what was the most feasible and efficient solution to the situation in Darfur. According to China, by having the domestic judicial system within Sudan prosecuting the perpetrators, it would avoid any negative impact of the political settlement and it would be better for the reconciliation. Because of these possible positive outcomes and “out of respect for national judicial sovereignty,” China “would prefer to see the perpetrators of gross violation of human rights stand trial in the Sudanese judicial system.”¹⁹⁵ China argued that Sudan has taken measures to improve their legal system, and the international community should assist Sudan to ensure “justice, transparency and credibility.”¹⁹⁶ Mr. Wang also argued that the Security Council should have received the Government of Sudan’s approval to refer the case to the ICC. In not doing so, China “cannot accept any exercise of the ICC’s jurisdiction against

¹⁹³ Ibid, 4.

¹⁹⁴ Ibid, 3.

¹⁹⁵ Ibid, 5.

¹⁹⁶ Ibid.

the will of non-state parties, and we would find it difficult to endorse any Security Council authorization of such an exercise of jurisdiction by the ICC.”¹⁹⁷

4.3 The ICC Reports to the Security Council

Immediately following the approval of Resolution 1593, Prosecutor Mr. Luis Moreno-Ocampo received from the COI, 2,500 documents and a sealed list with the names of 51 individuals that the Commission suspected for violation of humanitarian international law.¹⁹⁸ At the first Security Council reporting meeting, June 29 2005, the prosecutor could already confirm that the seriousness of the crimes were within the jurisdiction of the Court. The Prosecutor had started reviewing the judicial system within Sudan, and all the extra judicial measures adopted by the Government of Sudan. There have also been over 100 initial meetings with individuals and groups pertaining to information about the Darfur conflict, and a collection of another 3,000 documents.¹⁹⁹ There were no statements made by the members with respect to the first ICC report.

After the initial reporting meeting, the prosecutor would continue to report to the Security Council approximately every six months. By December 2005 the prosecutor reported to the Security Council that the Government of Sudan had become uncooperative with the ICC.²⁰⁰ Mr. Moreno-Ocampo continued to report about the lack of communication and collaboration by the Sudanese government throughout 2006 and 2007. All collaborative measures ended in February 2007, when the prosecutor delivered the first two applications for arrest warrants for the Sudanese Government official Ahmad Muhammad Harun and Janjaweed leader Ali Muhammad Ali Abd-Al-Rahman (known as Ali Kushayb).²⁰¹ In April 2007, the arrest warrants were approved and submitted. The pre-trial chambers of the ICC charged Harun and Kushayb with 51 counts of crimes against humanity.²⁰²

¹⁹⁷ Ibid.

¹⁹⁸ Arieff and others, 8.

¹⁹⁹ The United Nations Security Council, S/PV.5158 (March 31, 2005) 5

²⁰⁰ Security Council Report, Sudan/Darfur January 2006 (January, 2006).

²⁰¹ Peskin, 306.

²⁰² The International Criminal Court, “Situations,” International Criminal Court Website (Accessed May 20, 2010)

<http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0205/>

Mr. Moreno-Ocampo reported to the Security Council the following month after the arrest warrants, stating that the Government of Sudan had not collaborated with the ICC with the arrest warrants. In fact, it seemed like the Government of Sudan had started a campaign to sideline the ICC. After receiving the arrest warrants, the Government of Sudan promoted Mr. Harun to the Minister of State for Humanitarian Affairs.²⁰³ The prosecutor asked the Security Council and other international partners to encourage the Government of Sudan to arrest and surrender the two perpetrators as soon as possible. The Security Council failed to respond with official statements or actions.²⁰⁴ While there seemed to be little support from the Security Council, the ICC found itself under attack by the Government of Sudan which argued the ICC had no jurisdiction within Sudan and was therefore infringing on its sovereignty: because the ICC had no jurisdiction, there was also no need for Sudan to collaborate. Furthermore, the Government of Sudan started rallying support from other African and Arabian countries against what it argued was a “neo-colonial institution” focused on punishing Sudan and Africa. The ICC, according to the Government, was only a political tool being used in an “exercise of the culture of superiority” upon the weaker states.²⁰⁵

The Government of Sudan was not successful in derailing the ICC. In December 2007, Mr. Moreno-Ocampo delivered another report to the Security Council about new investigations, including of an attack on a peacekeeper by possible rebel fighters. The main focus of the report was the unwillingness of the Government of Sudan to collaborate with the ICC. The prosecutor reminded the Security Council that Sudan was actually repeatedly challenging the Security Council’s decision to give jurisdiction to the ICC. The prosecutor ended his report with one request:

“I ask the Security Council for consistency. I ask the Security Council to send a strong and unanimous message today to the Government of the Sudan, requesting compliance with resolution 1593 (2005), requesting the execution of the arrest warrants... The Council can make a difference; it can break the criminal system. What is at stake is, quite simply, the life or death of 2.5 million people.”²⁰⁶

²⁰³ The United Nations Security Council, S/PV. 5687 (June 7, 2007) 2.

²⁰⁴ *Ibid*, 5

²⁰⁵ Peskin, 307.

²⁰⁶ The United Nations Security Council, S/PV. 5789 (Dec 5, 2007) 6.

To this request, the members of the Security Council responded with statements of support for the prosecutor and the ICC. The United States was one of the members of the Security Council that voiced its strong support for the prosecutor, though it did remind the Security Council of its position towards the Rome Statute. As requested by the prosecutor, the United States called upon the Government of Sudan to collaborate fully with the ICC as requested by Resolution 1593. In the case of Darfur, the United States “believes strongly in the need for accountability for acts of genocide, war crimes and crimes against humanity committed in Darfur.”²⁰⁷ Mr. DeLaurentis ended the statement on behalf of the United States by suggesting that it would work with other members of the Council to determine concrete next steps.²⁰⁸

The Chinese official, Mr. Zhenmin, did provide some support to the ICC, but also warned the prosecutor not to discontinue its communication and collaboration with Sudan. Mr. Zhenmin’s statement came across much more as a cautionary word against the prosecutor’s approach to the investigation in Darfur. Mr. Zhenmin argued that the ICC was working on the basis of a Security Council Resolution mandate, and therefore should also be considering the overall political and security situations. The current approach taken by the prosecutor was “most unlikely to result in cooperation and support from the Sudanese Government. It would also hardly be conducive to the overall efforts of the international community to resolve the problem of Darfur.”²⁰⁹ The statement from the Chinese representative came across as an attack on the Prosecutor and his approach to the conflict in Darfur.

The statements made by China and the United States at the December reporting meeting in 2007 were the first statements with regards to the ICC since the approval of the Resolution 1593 almost three years earlier. The statements reflected a change of tone towards the ICC with both China and the United States: the United States being less hostile towards the ICC while China being more so. Though the United States did motion that they would be willing to work on concrete steps to take towards the uncooperative nature of the Government of Sudan, there were no measures or actions taken by the Security Council following this reporting meeting. However, according to Security

²⁰⁷ Ibid, 11.

²⁰⁸ Ibid, 11-12.

²⁰⁹ Ibid, 11.

Council Report, there was a presidential statement drafted by the European members of the Security Council that gained no support and was laid to rest.²¹⁰

4.4 The Security Council Responds

The silence that had lasted almost 3.5 years finally ended when the Security Council released a presidential statement June 16 2008. The decision to release the statement came after Mr. Moreno-Ocampo had reported to the Security Council that, “the entire Darfur region is a crime scene.”²¹¹ Relations with the Government of Sudan had not improved as the government continuously insisted that the ICC had no jurisdiction within Sudan. The prosecutor also reported that the ICC investigations had found “no trace of Sudanese proceedings in relations to the crimes in Darfur during the last three years.”²¹² The ICC received a confirmation from the Government of Sudan that said there were no cases.²¹³ The prosecutor called upon the Security Council to send a strong message to the Government of Sudan by issuing a presidential statement. The prosecutor ended by reminding the Security Council that “silence has never helped or protected victims. Silence only helps the criminals.”²¹⁴

In response to the prosecutor’s report, China was less hostile than its previous statement. The Chinese official, Mr. Yifan, voiced China’s support for the ICC in “appropriately resolving the problem of impunity in Darfur.”²¹⁵ The appropriate approach is repeatedly mentioned for the ICC to be a “supplement to the domestic juridical system of the state,” letting the domestic courts be the “main channel.” Nonetheless, the Chinese put pressure on the Sudanese Government to enhance its communication with the ICC, strengthen cooperation, establish mutual trust and jointly resolve the problem of impunity in Darfur.”²¹⁶ This was a clear shift from the previous Chinese statement, which blamed the ICC for lack of effort in eliciting cooperation from the Government of Sudan.

²¹⁰ Security Council Report, Sudan/Darfur January, 2008 (January, 2008).

²¹¹ The United Nations Security Council, S/PV. 5905 (June 5, 2008) 2.

²¹² Ibid.

²¹³ Ibid.

²¹⁴ The United Nations Security Council, S/PV. 5905 (June 5, 2008) 5

²¹⁵ Ibid, 15.

²¹⁶ Ibid.

Mr. Khalilzad, on behalf of the United States, was the President of the Security Council for the month of June, and concluded the Security Council discussions by presenting a statement for the United States:

“The United States strongly believes that those responsible for the acts of genocide, war crimes and crimes against humanity committed in Darfur must be held accountable and be brought to justice. We look forward to continuing to work with other members of the Council on necessary steps, including working with Costa Rica on a draft presidential statement to achieve that important objective.”²¹⁷

The United States acknowledged that the ICC would be the institution that would investigate and prosecute the crimes in Darfur. The United States did not mention that it would like to see anyone else investigate the cases or that the domestic judicial system within Sudan should handle the cases. It is also important to note that for the first time during all the statements made by the United States during the Security Council discussions on the topic of the ICC and its investigation in Darfur, the representative did not reiterate the American justification for its position against the ICC.

Immediately after the reporting meeting, Costa Rica drafted a presidential statement and started negotiating support for the draft. There was solid support from the state parties of the Rome Statute, the European countries, and as well, from the United States. The opposition to the draft was led by China and included Russia and Libya. The main concerns voiced by the opposition camp were the possible impact on the political negotiations and the need for the Sudanese court to be the main channel for prosecutions.²¹⁸ Following intense negotiations and several drafts, the Security Council released the Statement by the President of the Security Council on June 16, 2008 urging “the Government of Sudan and all other parties to the conflict in Darfur to cooperate fully with the court, consistent with resolution 1593 (2005), in order to put an end to impunity for the crimes.”²¹⁹ The statement also recognized the efforts by the prosecutor of the ICC of trying to bring justice to Darfur, and its efforts to work with the Government of Sudan with the arrest warrants and investigations. The statement also included a short reminder of the principle of complementarity to which the ICC is to adhere.

²¹⁷ Ibid, 18

²¹⁸ Security Council Report, Update Report No. 4: Sudan/Darfur, (June 11, 2008).

²¹⁹ The United Nations Security Council, Statement by the President of the Security Council, June 16, 2008.

Although the presidential statement included rather soft language and no threats concerning Sudan's unwillingness to cooperate, it indicated continued support for the ICC to investigate the Darfur atrocities. Particularly noticeable was the support provided by the United States, as the acting President of the Security Council, to put the issue on the meeting agenda and ensure that the statement was released. This was the strongest gesture of support that the United States had provided the ICC in its short history.²²⁰ Meanwhile, although it was obvious that the Sudanese judicial courts were not able or willing to prosecute the perpetrators in Darfur, the Chinese delegation still pushed for the right of the Sudanese judicial system to handle the cases.

4.5 A Presidential Arrest Warrant

Within a month after the release of the presidential statement, Mr. Moreno-Ocampo surprised the majority of the international community by filing an application for a warrant of arrest for the President of Sudan, Omar Haasan Ahmed Al-Bashir, to the judges of the ICC. It was the first time that a sitting head of a government was charged with violations of international humanitarian law, including crimes against humanity, war crimes and genocide. The prosecutor's application should not have been a surprise to the Security Council, as the prosecutor had informed the Security Council about the upcoming arrest warrant at the previous reporting meeting in June. The prosecutor had said "I will proceed to the judges in July and present my evidence on who are those most responsible for the crimes described."²²¹ The Government of Sudan strongly opposed the arrest warrant application and warned the international community about the consequences of the ICC actions, including the peace reconciliations and humanitarian operations in Darfur.²²² The international humanitarian aid and human rights community already involved in Darfur, such as Amnesty International and Human Rights Watch celebrated the possible arrest warrant as an important step in international humanitarian law.²²³ Regional organizations were divided. The EU called upon the Government of

²²⁰ Peskin, 318.

²²¹ The United Nations Security Council, S/PV. 5905, (June 5, 2008) 4.

²²² Security Council Report, Sudan/Darfur August 2008, (August, 2008).

²²³ Arieff and others, 11.

Sudan to cooperate with the prosecutor and the Court,²²⁴ while the AU and the Arab League urged the ICC to defer the warrant.²²⁵

The same divisions seen in the international community were also present among the permanent members of the Security Council. China immediately started working against the prosecutor's application by arguing for the implementation of Article 16 of the Rome Statute.²²⁶ The approval of Article 16 by the Security Council could delay an ICC investigation or prosecution for a period of 12 months, renewable thereafter.²²⁷ China did not want to be the main initiator behind the implementation of Article 16 and the delay an ICC investigation as it was already being strongly reprimanded by the media for its human rights stance in the months before the opening of the summer Olympics in Beijing. Instead, China tried to push African and Arab member countries of the Security Council to call upon the use of Article 16 for the purpose of international peace and security.²²⁸ Unexpected support was also found among other members of the Security Council with Britain and France, two of the strongest supporters of the ICC. Britain and France had both lobbied the EU to support the ICC and the warrant, but were willing to discuss the possibility of making a deal with the Government of Sudan. If the Government of Sudan would be willing to hand over Mr. Harun and Mr. Kushayb, Britain and France would be willing to support an Article 16 resolution. The negotiations regarding this possible deal ended in October 2008 as the Government of Sudan was unwilling to hand over the two suspects.²²⁹

The discussions around a possible Article 16 resolution took a sharp turn when the United States announced it would not support such a resolution. Resolution 1828, which was supposed to renew the mandate for African Union/United Nations Hybrid operation in Darfur (UNAMID), included language about the Security Council being concerned about the ICC arrest warrant requests.²³⁰ While the Resolution was approved with 14 votes in favour, the United States abstained from the vote because of the

²²⁴ Ibid, 11

²²⁵ Ibid, 18.

²²⁶ Peskin 320

²²⁷ International Criminal Court, *Rome Statute of the International Criminal Court*, (July 1, 2002), 12. <http://www.icc-cpi.int/Menus/ICC/Legal+Texts+and+Tools/Official+Journal/Rome+Statute.htm>

²²⁸ Peskin, 309

²²⁹ Peskin, 310

²³⁰ Security Council Report, *Sudan/Darfur September 2008*, (September 2008).

inclusion of the language mentioning the ICC arrests concerns. Speaking on behalf of the United States, Mr. Wolff, argued that the language in the resolution was sending the wrong message to the Government of Sudan. Furthermore, the “United States felt it was time to stand up on this point of moral clarity and make clear that this Permanent Member of the Security Council will not compromise on the issue of justice.”²³¹ The degree of support provided by the United States to the ICC had now surpassed that of the other permanent members of the Security Council.

When Mr. Moreno-Ocampo met with the Security Council in December 2008, he provided a better explanation for the case he had made against President Al-Bashir. In particular, the prosecutor shared evidence that the president had ordered attacks on certain people in Darfur in March 2003. When giving his orders, President Al-Bashir stated “I want no prisoners or wounded, only scorched earth”²³² The prosecutor reminded the Security Council that the decision was now up to the judges of the ICC. If the judges decided to issue the arrest warrant against the president, the prosecutor warned that the Security Council must act united. Mr. Moreno-Ocampo advised the international community not to try to conceal the crimes. “President Al-Bashir’s criminal actions should not be ignored. Statements of ceasefires followed by bombings, denial of mass rapes or promises of justice while torturing the witnesses should not be supported. The international community cannot be part of any cover-up of genocide or crimes against humanity.”²³³

In response to the prosecutor’s report, China and the United States reiterated the arguments stated earlier in the Security Council meetings. China continued to argue for a solution that would support the political reconciliation ongoing in Darfur. As before, China argued that the approach taken by the prosecutor and the ICC is harmful for this process. The prosecutor has with the arrest warrants for the president caused serious repercussions for the peace process. China continued to insist that the Government of Sudan is working on ending the impunity in Darfur through its national apparatus.²³⁴ While China reiterated its dedication to peace and security in Sudan, the United States

²³¹ The United Nations Security Council, S/PV. 5947 (July 31, 2008) 8.

²³² The United Nations Security Council, S/PV. 6028 (Dec 3, 2008) 2.

²³³ *Ibid*, 5.

²³⁴ *Ibid*, 10.

seems to have seriously embraced the role as the new moral leader within the Security Council. Ms. DiCarlo argued that the United States “remains steadfastly committed to promoting the rule of law and helping to bring violators of international humanitarian law to justice, and it will continue to take a leadership role in righting those wrongs.”²³⁵ The United States also reiterated that its dedication to justice could be seen through its actions in this case, and that there should be no doubt about these commitments.²³⁶

On March 4 2009, the judges of the ICC came to a final decision and issued an arrest warrant for President Al-Bashir for five counts of crimes against humanity and two counts of war crimes. Two of the three judges did not find reasonable grounds for the genocide conviction, while the third judge thought otherwise and wrote a dissent paper for why she believed it was a genocide.²³⁷ Immediately following the decision, the prosecutor filled an appeal for the genocide conviction. The appeal has not to this date been reviewed by the ICC judges. The response from the Government of Sudan was as expected. The government said that this “decision is exactly what we have been expecting from the court, which was created to target Sudan and to be part of the new mechanism of neo-colonialism.”²³⁸ President Al-Bashir responded by telling the ICC that they could eat the warrant, and that the warrant was “not worth the ink it is written on.”²³⁹ The most unfortunate part of the response from the Government of Sudan was the expulsion of foreign aid agencies in Darfur. The day after the arrest warrant, Al-Bashir expelled 10 aid agencies. This decision was taken according to Al-Bashir because Sudan was as a “responsible government.”²⁴⁰ A series of warnings were also released by Sudanese government officials threatening the safety of peacekeepers and UN personnel in Sudan.²⁴¹

China’s Department of Foreign Affairs decided to hold a press conference the day after the arrest warrant was released to clarify China’s position. Speaking to the media

²³⁵ Ibid, 15.

²³⁶ Ibid.

²³⁷ Samuel Totten, “Editor’s Introduction,” Genocide Studies and Prevention (Vol. 4, No. 3, December 2009), 278.

²³⁸ _____, “Warrant Issued for Sudan’s leader” BBC News World (Published March 4, 2009).

²³⁹ Ibid.

²⁴⁰ _____, “Sudan’s Bashir says 10 aid agencies expelled,” Reuters (Published March 5, 2009). <http://www.reuters.com/article/idUSL5720994>. CH .2400

²⁴¹ Arieff and others, 13.

Qin Gang, a spokesman for Foreign Affairs, said that it was the role of the international community to foster peace and stability in the region, and not to take decisions that will negatively affect this. China did recognize that judicatory justice is important, she said, but it should not be “acquired at the cost of peaceful process in the region.”²⁴² China was concerned about how this will affect the future reconciliation process, as pointed out by Qin: “If the President was a criminal, how could the opposition faction consider him as a credible negotiator to seek political reconciliation?”²⁴³

In November 2008, Barack Obama, a Democrat, was elected President of the United States. In the months leading up to the election, Obama had been quite outspoken regarding the Darfur conflict stating in a November 2007 interview that the United States had a moral obligation to stop the genocide in Darfur.²⁴⁴ With Obama entering office it was uncertain if Obama’s dedication to pursue justice in Darfur would continue. Nonetheless, after taking office in January 2009, the Obama administration argued was that, in Sudan, “those that have committed atrocities should be held accountable.”²⁴⁵ It also started a foreign policy review on the American stance toward the ICC. Speaking about the review, Secretary of State Hillary Clinton said, “Whether we work toward joining or not, we will end hostility toward the ICC and look for opportunities to encourage effective ICC action in ways that promote U.S. interests by bringing war criminals to justice.”²⁴⁶ In response to the warrant and the expulsion of the aid agencies, President Obama stated that “It is not acceptable to put that many people’s lives at risk...We need to be able to get those humanitarian organizations back on the ground.”²⁴⁷ Secretary of State Hillary Clinton argued that President Bashir “would have a chance to have his day in court if he believes that the indictment is wrongly charged. He can certainly contest it.”²⁴⁸

Mr. Moreno-Ocampo continued to report to the Security Council throughout 2009. The message was the same; the Government of Sudan continued to not cooperate

²⁴² _____, “China regretful, worried about Sudan president arrest warrant,” Xinhuanet.com (Published March 5, 2009).

²⁴³ Ibid.

²⁴⁴ [Save Darfur Coalition](http://SaveDarfurCoalition.org), “Video: Barak Obama on Darfur,” November 26, 2007.

²⁴⁵ Arieff and others, 1.

²⁴⁶ Ibid, 4.

²⁴⁷ _____, “Obama condemns Darfur Expulsions,” [BBC News World](http://BBCNewsWorld.com) (Published March 11, 2009).

²⁴⁸ Arieff and others, 1.

with the ICC or its investigations. At the December 2009 reporting meeting, China and the United States both made statements after the report was completed. The United States made the strongest statement for the ICC, and the investigations in Darfur to this date, as Ms. DiCarlo stated;

“Those responsible for these atrocities must be held accountable. We urge all States, including those not party to the Rome Statute, to refrain from providing political or financial support to Sudanese suspects indicted by the ICC. Although the United States is not party to the Rome Statute, it was pleased to participate last week for the first time as an observer in the Assembly of States Parties to the Rome Statute. That decision reflected the United States commitment to engage with the international community on issues that affect our foreign policy interests. Ending impunity for crimes against humanity, including crimes on the staggering scale of those committed in Darfur, ranks high among our commitments. The United States will therefore continue to be supportive of the ICC’s prosecution of these cases to the extent consistent with United States domestic law.”²⁴⁹

The United States did not only strongly supported the ICC, but also encouraged other states that are non party to the Rome Statute to support the ICC’s quest for justice. It was also a new development that the United States was attending the Assembly of States Parties meeting. The statement provided by the United States and its decision to attend the meetings of the Assembly of States Parties reflected the new position of the Obama Administration towards the ICC.

In China’s statement to the Security Council, Mr. Zhenmim, summarized the Chinese position towards the Darfur conflict.

“Over the past several years, the Security Council has considered the question of Darfur in the Sudan many times. During those considerations, the Chinese delegation has always emphasized the viewpoint that the Darfur issue involves a political process, peacekeeping deployment, economic development, humanitarian assistance and justice. It is very complex and requires tremendous political wisdom to find a comprehensive solution that ensures that peace and justice are achieved.”²⁵⁰

In that respect, China hoped that the prosecutor would recognize all these complexities and would “objectively review the latest developments and various challenges on the

²⁴⁹ The United Nations Security Council, S/PV. 6230 (December 5, 2009) 7.

²⁵⁰ *Ibid*, 11.

Darfur question, and contribute to the comprehensive and proper settlement of the Darfur issue.”²⁵¹

4.6 Conclusion

Before the discussion surrounding the ICC investigation of the Darfur atrocities started in the Security Council, China and the United States had a prescribed policy towards the ICC. The two countries had similar justifications for their stance against the Rome Statute; mainly the interference within state sovereignty by overstepping the domestic judicial system. Still, they had to decide to take two different approaches to deal with the establishment of the ICC. China decided to keep relations friendly with the ICC and continue to be involved in its developments as an observer state. The United States under the leadership of President Bush decided to ensure the American interests were supported, while also deliberately undermining the role of the ICC. The Chinese and American policy towards the ICC coloured their actions and statements made in the Security Council.

Throughout the discussions in the Security Council on the topic of the ICC and investigations in Darfur maintained persistent pressure, China persistently encouraged the use of the domestic judicial system in Sudan on the grounds of the principle of complementarity. China also tried to gain international support for this argument by arguing that this solution was the only solution that would support the political reconciliation and security in Darfur. China continued to use this argument after the COI and the ICC had found the Sudanese courts unable and unwilling to obtain justice for the victims in Darfur. While the Government of Sudan continued to be uncooperative with the ICC, China argued that it was the ICC to blame for its approach to the Government of Sudan that had resulted in this behaviour. During the discussions surrounding the Presidential Statement July 2008, the Chinese language did soften towards the ICC and encouraged the Government of Sudan to strengthen its cooperation and communication with the ICC. This was arguably because of the pressure the Chinese government was receiving from the international community with the upcoming Olympic Games in August 2008. After the pressure dissipated from the international community, China

²⁵¹ Ibid.

returned to the same arguments and justifications against the ICC. During all the Security Council meetings, China consistently argued against the possible threat of the ICC against the sovereignty of Sudan.

The United States' stance on the ICC investigations in Darfur changed significantly from the Security Council referral in March 2005 to the ICC reporting meeting December 2009. At first, it was seen as a watershed event when the United States let Resolution 1594 pass and the referral to the ICC be implemented. Nonetheless, the United States was sure to voice its strong discontent with the Resolution and the role of the ICC in the investigations. Three and a half years later, the United States presided over the Security Council when the Presidential Statement was released urging the Government of Sudan to cooperate indicated significant and newfound American support for the ICC. This was the first recognizable shift in American policy regarding the ICC.

The new policy continued to be strengthened within the next month as the United States blocked the possible vote on Article 16. Suddenly, the state that had been the strongest opponent to the ICC had become its most reliant supporter within the Security Council. As noted by the United States, it had decided to take the moral high ground. The argument used for this stance was that the United States wanted to see those responsible for the crimes to be held accountable. It is important to note that, though there was also a recognizable shift towards more support for the ICC when President Obama entered office, the shift in policy occurred before he became president. While the United States did at first find the ICC to be a threat to the "essence of the nature of sovereignty," it has since recognized the need for the ICC to breach the sovereignty rights of Sudan to bring justice to Darfur region.

5. THE THIRD DARFURIAN CHALLENGE TO STATE SOVEREIGNTY: THE DEPLOYMENT OF A PEACEKEEPING OPERATION

5.1 Introduction

In stark contrast to the Cold War era, the Security Council evoked Chapter VII more than a dozen times in the 1990s in response to several severe humanitarian disasters occurring in Somalia, Rwanda, East Timor and Kosovo.²⁵² The sharp increase of the use of Chapter VII correlated with a sharp increase of UN peacekeeping mission. Though the UN have to date had 64 peacekeeping missions, 51 of the missions have been after 1988.²⁵³ The nature of peacekeeping missions has also changed, and peacekeepers have been increasingly asked to take upon new roles. The new roles included all ranges between providing military support for the protection of civilians to building social institutions for education and health care. Modern UN peacekeeping missions were no longer only about monitoring a negotiated truce, but about ‘peacemaking’ by facilitating and negotiating the political process. It was also about rebuilding a country after conflict, namely, ‘peacebuilding,’ including restoring communities and the rule of law.²⁵⁴ The new multidimensional peacekeeping missions are today providing more pressures on state sovereignty than the traditional peacekeeping missions did in the past. The modern peacekeeping missions will in some cases take over the role of a state, including such roles providing a judicial system or policing. Modern peacekeeping has therefore been seen as one of the most intrusive challenges to state sovereignty.

The sharp increase of the use of Chapter VII and peacekeeping missions could be interpreted as a shift in international law in which humanitarian disasters were seen as just cause for intervention in a functioning state. Nonetheless, the Security Council has never intervened for humanitarian purposes in a fully functioning state without its

²⁵² Mingst and Karns, 109-110.

²⁵³ _____, “History of Peacekeeping,” United Nations Peacekeeping . Accessed last on March 8, 2011. <http://www.un.org/en/peacekeeping/operations/history.shtml>

²⁵⁴ _____, “The Present,” United Nations Peacekeeping . Accessed last on March 8, 2011 <http://www.un.org/en/peacekeeping/operations/present.shtml>

consent.²⁵⁵ This is a reflection of the Security Council's unwillingness to breach the principle of non-intervention even when faced with the worst humanitarian disasters. The unwillingness to breach the principle of non-intervention without the government's consent has also complicated the response to the Darfur conflict.

Over the last decade there have been two separate conflicts in southern and western Sudan that have required peacekeeping support from outside the country's borders. The United Nation Mission in Sudan (UNMIS) was authorized by Resolution 1590 (2005) to support the implementation of the Comprehensive Peace Agreement (also known as the Naivasha Agreement) signed between the government of Sudan and rebel forces in southern Sudan. Resolution 1590 included only the southern region and did not give the UNMIS a mandate to monitor the situation in the western region of Darfur, though the conflict had already been ongoing for years. It was the African Union (AU) that had first reacted and sent a monitoring team into Darfur as early as April 2004. Before the end of the year, the AU had expanded the monitoring team to a peacekeeping force, named the African Union Mission in Sudan (AMIS), with a mandated force of about 7,000 strong. This was the first official AU peacekeeping operation, and the expectations were high. Nonetheless, the success of AMIS was threatened by its lack of experience among the troops and limited resources to pay for troops and equipment.²⁵⁶ In result, the AU peacekeeping force was stretched too thin, and struggled to keep its mandate within Darfur. When the AMIS mandate came to its end in September 2006, the AU announced that it was not willing to continue its mission and called upon the UN to take the leadership in Darfur.²⁵⁷

When first discussing the need to begin a peacekeeping operation in Darfur, the Security Council had considered three options. First, it could expand the peacekeeping operations of the UNMIS in Southern Sudan to the eastern Darfur region. The second option was to seek a partnership with the AU peacekeeping mission, which was struggling to keep its mandate within Darfur. Third, the Security Council could approve a new peacekeeping operation to enter Darfur. When reviewing the Security Council

²⁵⁵ Paul D. Williams and Alex J. Bellamy, "The Responsibility to Protect and the Crisis in Darfur," in *Security Dialogue* Vol. 36:1 (March 2005), 41.

²⁵⁶ Grono, Nick. "Briefing – Darfur: The International Community's Failure to Protect." *African Affairs* (105, no. 421, 2006) 626.

²⁵⁷ _____, "African Union will "quit Darfur" *BBC News* (Publish September 5, 2006).

meeting records, it is noted that all these options were discussed at different times within the Security Council and all options were presented as viable solutions to the ongoing humanitarian disaster in Darfur. However, each of the options would violate the non-intervention principle if the Government of Sudan withheld consent. This chapter will review the discussions the Security Council had regarding the peacekeeping options, and how it dealt with the possible breach of the sovereign powers of Sudan during 2004 and 2009. Special attention will be given to the statements made by the officials from Washington and Beijing. It should be noted that the chapter will also use the term peacekeeping in an overarching term to describe all the multidimensional tasks prescribed to a modern peacekeeping force, including peacemaking and peacebuilding.

5.2 Resolution 1706

The Darfur conflict by January 2004 was already coined as one of the worst humanitarian disasters in the world by UN officials.²⁵⁸ In the following months, a debate erupted as to whether the conflict should be defined as genocide. In September the United States became the first country to declare the atrocities to be of genocidal intent.²⁵⁹ Though not everyone was willing to use the genocide description, there was overall recognition that the conflict was a humanitarian disaster. Regardless of the seriousness of the conflict, the Security Council saw no need for the UN to take a leadership role. In fact, the Security Council continued to voice support for the AU and an “African solution to an African problem.”²⁶⁰ The Security Council released a presidential statement May 12, 2005 that applauded the “vital leadership role” of the AU in Darfur.²⁶¹ At the same time it was becoming more evident that the AU peacekeeping force AMIS was struggling to keep its mandate in Darfur. In January 2006, the AU released a communiqué that welcomed a transition to a UN peacekeeping operation.²⁶² Responding to the AU communiqué, the Security Council released a presidential statement in February 2006 asking Secretary General Kofi Annan to initiate the planning process to transition from an AU led

²⁵⁸ Michael Clough. *Darfur: Whose Responsibility to Protect?* Human Rights Watch (January 2005) 3.

²⁵⁹ Williams and Bellamy (2005), 31.

²⁶⁰ Ibid, 35.

²⁶¹ The United Nations Security Council S/PRST/2005/18, May 12, 2005.

²⁶² The United Nations Security Council S/PRST/2006/5, Feb 3, 2006.

peacekeeping operation to a UN led operation. The Secretary General was to assess the current AMIS structure and evaluate how to possibly reallocate UNMIS resources to include the Darfur region.²⁶³ While the Secretary General was assessing the situation, the parties of the Darfur conflict signed the Darfur Peace Agreement (DPA) on May 5, 2006. Following the signing, the AU announced its decision to end the AMIS mandate September 30, 2006, with the possibility of lengthening the mission as long as a transition agreement was reached before this date.²⁶⁴

In the meantime, the Secretary General worked hard to develop a transition plan for the UN to take over from the AU. The task soon became much more difficult than first anticipated. The Government of Sudan strongly objected to the transition, and argued for the AU to continue to lead the operation. As a last resort, the government would agree to let the UN provide some support to strengthen the AMIS operation, but would not let the UN take over the lead of the operation. The Secretary General continued to invest huge diplomatic efforts to gain governmental consent during the spring and summer months, but was unsuccessful.²⁶⁵ The Secretary General released his recommendations on July 2006 without having the consent of the Government of Sudan and therefore without a completed transition plan. The Secretary General advised the Security Council to immediately strengthen the AMIS operations which would increase the chances for success of the Darfur Peace Agreement (DPA).²⁶⁶ For the transition, the Secretary General recommended that the UNMIS operations should be expanded to include the Darfur Region as of January 1, 2007. The main mandate of the operations would be to promote and support the implementation of the DPA, with the “overarching aim of assisting the Sudanese to bring peace and development to the entire country.”²⁶⁷ Furthermore, the Secretary General insisted that “the United Nations cannot take over full peacekeeping responsibilities in the region until it has the consent and cooperation of the

²⁶³ Ibid.

²⁶⁴ The United Nations Security Council, “Report of the Secretary General” S/2006/591, July 29, 2006. Page 3.

²⁶⁵ The United Nations Security Council, “Report of the Secretary General” S/2006/591, July 29, 2006. Page 4.

²⁶⁶ The United Nations Security Council, “Report of the Secretary General” S/2006/591, July 29, 2006. Page 9-10

²⁶⁷ Ibid, 11.

Government of Sudan.”²⁶⁸ In concluding remarks, the Secretary General urged the Security Council and the international community to focus their efforts to gain consent from the Government of Sudan.²⁶⁹

After the report was released, the Security Council had to decide how to proceed. Although, peacekeeping missions were regularly approved by the Security Council in the 1990s, peacekeeping operations discussions still initiated debate among members of the Security Council. Two of the members of the Security Council, China and the United States, were very vocal on the topic. Since the 1990s, China had generally supported peacekeeping missions, but was apprehensive about the long-term implications regarding state sovereignty. China has remained consistent in its approach to peacekeeping and has maintained that interference within the internal affairs of a sovereign state is a violation of the UN Charter, in particular Chapter 1 Article 4 (that opposes the use of force against a sovereign state).²⁷⁰ While speaking on this topic, former Foreign Minister Qian Qichen reaffirmed China’s position:

“It is our consistent view that peacekeeping operations should strictly conform to the principles of the UN Charter and the norms of international relations. Such operations should be undertaken only with the consent and cooperation of the parties concerned, and an impartial and unbiased attitude must be maintained. No peacekeeping operations or humanitarian aid programs should be permitted to interfere in the internal affairs of any country, still less to use force and get embroiled in a conflict between the parties.”²⁷¹

If a proposed peacekeeping operation fit within this policy framework, China would have been more likely to approve a Security Council resolution. Since 2000 China has become more active in providing military support for peacekeeping missions, including peacekeeping support in Haiti and Sudan. In fact, China has deployed more troops and police to UN peacekeeping operations than any other of the five permanent members of the Security Council as of March 2010.²⁷² When peacekeeping missions have occurred outside UN, China has often been a vocal opponent. China spoke strongly against the

²⁶⁸ Ibid, 28.

²⁶⁹ Ibid, 29

²⁷⁰ Gary D. Rawnsley, “May You Live in Interesting Times: China, Japan and Peacekeeping” in Major Powers and Peacekeeping: Perspectives, Priorities and the Challenges of Military Intervention, ed. Rachel E. Utley (Burlington: Ashgate Publishing Ltd., 2006) 84..

²⁷¹ Rawnsley, 85.

²⁷² United Nations Department of Peacekeeping Operations and, Fact Sheet: United Nations Peacekeeping (March 11, 2010)

NATO military invasion into former Yugoslavia and the American invasion of Afghanistan (although China currently has troops in Afghanistan in the UN peacekeeping force).²⁷³ Nevertheless, it has been pointed out that China is willing to ignore its stand on peacekeeping if it is to clash with its national interests. Such was the case when China vetoed the renewal of the UN Preventive Deployment Force (UNPREDEP) in Macedonia as the country had recently recognized Taiwan.²⁷⁴

In May 2006, before the Secretary General's recommendations on the transition were released, China made a statement regarding its stance on the issue. The Chinese representative to the Security Council, Mr. Zhang Yishan, disclosed:

“We believe that, if the United Nations is to deploy a peacekeeping operation in Darfur, the agreement and cooperation of the Sudanese Government must be obtained. That is a basic principle and precondition for the deployment of all United Nations peacekeeping operations.”²⁷⁵

China insisted that consent of the Government of Sudan was crucial to any resolutions, and asked the Security Council not to hasten any decisions without the consent. Without the consent, it would be a breach of the Sudanese sovereign rights. The Chinese stance on peacekeeping was much different from that of the Americans.

In the early 1990s, the United States was one of the leading peacekeeping nations. Both the American presidents of that decade, George H. W. Bush and Bill Clinton, supported the United States taking an active role in peacekeeping operations around the world. The United States was a key player in peacekeeping missions as they provided the main air lift capacity, technology and military strength.²⁷⁶ Though the American forces did experience success, it was the disastrous events of the Somalian civil war that would taint the rest of the decade and the American policies towards peacekeeping. In October 1993, the intense fighting within Somalia led to 18 American peacekeepers' brutal deaths, including decapitations and dead bodies being dragged from cars in the streets.²⁷⁷

²⁷³ Andrew Higgins, “China showcasing its softer side” in the Washington Post December 2, 2009. <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/01/AR2009120104060.html>

²⁷⁴ Rawnsley, 87.

²⁷⁵ UNSC Res 1679, May 16, 2006.

²⁷⁶ Thomas G. Weiss, “The Sunset of Humanitarian Intervention? The Responsibility to Protect in A Unipolar Era,” in Security Dialogue (Vol. 35, No. 2, 2004), 141.

²⁷⁷ ICISS, 96.

The American lesson learned was to be more cautious regarding where to deploy peacekeeping forces, especially in the case of civil wars. The new American cautious approach to peacekeeping was months later blamed for the slow response to the Rwandan genocide as the United States continuously blocked resolutions in the Security Council.²⁷⁸ Although the United States continued to be active in the UN peacekeeping mission throughout the 1990s, President Clinton did so without congressional or political support. On the day of his inauguration, President George W. Bush responded to the American political pressures and announced his intentions to reduce American commitments abroad.²⁷⁹ Soon thereafter, the war on terror became the main focus of the Bush administration and provided a good justification for redirecting resources away from peacekeeping missions.²⁸⁰

In the spring months of 2006, while the Secretary General was working on the transition plan, the United States published its National Security Strategy. In this report, the Bush administration clarified its stance on peacekeeping, which is referred to in this document as “conflict intervention.” The report argued that “some conflicts pose such a grave threat to our broader interests and values that conflict intervention may be needed to restore peace and security.”²⁸¹ Furthermore, the report argued that,

“Where perpetrators of mass killing defy all attempts at peaceful intervention, armed intervention may be required, preferably by the forces of several nations working together under appropriate regional or international auspices.”²⁸²

Interestingly, the United States did not support the requirement to obtain the consent of the country within which they intervene. It did, however, indicate a preference for using multilateral peacekeeping forces.

Following its suggested collaborative framework, the United States co-sponsored a draft resolution with permanent members France and Great Britain, and other non-permanent members in an effort to respond to the recommendations put forth by the

²⁷⁸ Samantha Power “A Problem from Hell” *America and the Age of Genocide* (New York: Basic Books, 2002) 369.

²⁷⁹ Edward M. Spiers “US Peace Operations: The Transition Continues” *Major Powers and Peacekeeping: Perspectives, Priorities and the Challenges of Military Intervention*, ed. Rachel E. Utley (Burlington: Ashgate Publishing Ltd., 2006) 18.

²⁸⁰ *Ibid*, 25.

²⁸¹ The National Security Strategy of the United States of America 2006, pg. 16.

²⁸² *Ibid*, 17.

Secretary General. On August 31, the Security Council adopted Resolution 1706 with 13 countries in favour, and three countries abstaining. By evoking Chapter VII, the Security Council extended the UNMIS operations to include the Darfur region. The resolution provided the UNMIS with the authorization to use all necessary means, including force if necessary, to ensure protection of humanitarian relief efforts, assistance with the implementation of the DPA and the protection of civilians from violence. With the dire situation in Darfur, the resolution called upon its members to provide for a rapid deployment of a force of almost 20,000 military personnel and civilian police.²⁸³ In a surprising twist, the resolution did not directly include the requirement to obtain the consent from the Government of Sudan, but rather “invited” the consent.²⁸⁴ In other words, the resolution recognized the importance of the consent, but provided for the transition to occur without the consent.

Taking into consideration the Chinese stance on the issue, it was expected that the Chinese delegation would veto a resolution that did not specify the need to obtain consent from the Government of Sudan for the transition.²⁸⁵ Though China did not veto the resolution, China did show its discontent by abstaining from the vote. Explaining China’s decision to abstain, Mr. Wang Guangya, presented the reasoning;

“...[W]e have consistently urged the sponsors to clearly include ‘with the consent of the Government of National Unity’ in the text of the resolution, which is a fixed and standardized phrase utilized by the Council when deploying United Nations missions. We also urged the sponsors to carefully reconsider the timing of the vote. Regrettably, they failed to earnestly heed China’s sincere efforts. Due to our principled reservations on the timing of the vote and on the text itself, China could not but abstain from the voting.”²⁸⁶

In summary, China would have preferred for the Security Council to delay the vote on the resolution until it had secured the consent from the Government of Sudan. China did not see the urgency as some of the other members, though the AMIS force was to be pulled out within the next month if no transition plan was approved and the humanitarian situation in Darfur had recently taken another turn for the worse.

²⁸³ United Nations Security Council, Resolution 1706 (August 31, 2006), S/RES/1706(2006) 3-6.

²⁸⁴ Ibid, 3.

²⁸⁵ Security Council Report August 2006.

²⁸⁶ UNSC S/PV.5519, (August 31, 2006) 4.

The United States was one of the members of the Security Council that recognized the urgency of the resolution. In addressing the Security Council, the United States Ambassador Bolton argued that it was “imperative” that the UN “move immediately to implement it [the resolution] fully to stop the tragic events unfolding in Darfur.”²⁸⁷ Ambassador Bolton went on to describe an ongoing supreme humanitarian disaster occurring in Darfur, to which he referred to as a genocide. In the wake of such a disaster, he indicated that the Security Council “cannot afford to delay” and, of the resolution, we must “devote all of our energies to securing its immediate and full implementation.”²⁸⁸ The United States was obviously not concerned with the language used in the resolution, as the American official was pleased to see that “the Security Council upheld its responsibility and adopted a strong resolution.”²⁸⁹ The United States did not see the necessity to seek the approval of the Government of Sudan to proceed with the implementation of the resolution and the transition of the peacekeeping operation.

5.3 Resolution 1769

Unfortunately, the Government of Sudan did not recognize the urgency to implement the Resolution 1706. When the September deadline for the AU withdrawal had passed, there was still no agreement regarding the transition. The AMIS operation was struggling in Darfur as the situation continued to deteriorate to “unprecedented levels.”²⁹⁰ The UN relationship with the Government of Sudan was also under considerable pressure. In October, the UN Special Representative for Sudan, Jan Pronk was expelled by the Government of Sudan for writing about the government’s operations in Darfur.²⁹¹ President Omar al-Bashir had also released statements to the media arguing that the UN transition plan was an American influenced plot to take over its oil and resources. If the UN decided to deploy their forces without the consent from the government, the president threatened to order attacks on the UN soldiers.²⁹²

²⁸⁷ UNSC S/PV.5519, (August 31, 2006) 2.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Security Council report November, 2006

²⁹¹ Warren Hoge, “Khartoum expels U.N. Envoy Who Has Been Outspoken on Darfur Atrocities,” in The New York Times, October 23, 2006. Posted online.

²⁹² Ibid.

The Secretary General continued his diplomatic efforts by hosting a high level consultation meeting in Addis Ababa in November for all the partners, including the Government of Sudan, the permanent five members of the Security Council (P5), and the AU. At the meeting, the Secretary General proposed a new peacekeeping plan. The plan suggested that the UN would first provide support for the AMIS operation, while the long-term plan was for the AU and the UN to jointly lead the mission in a hybrid operation. All partners approved the new hybrid force in principle, including the Government of Sudan.²⁹³ Although there was no agreement of the structure or strength of the hybrid force, it was agreed that the force would stay “predominantly African in character.”²⁹⁴ All these details would have to be agreed upon before a new resolution could be put forth for a vote in the Security Council. Although no immediate resolution was put forth, the Security Council released a presidential statement on December 19, 2006 in support of the decisions made at the Addis Ababa meeting, and also called for the immediate deployment of UN forces to supplement AMIS.²⁹⁵ By January 2007, the UN had started their first phase of the plan, which included providing support to the AMIS operations. Nonetheless, there was still no official agreement regarding the hybrid operations. The Government of Sudan was continuously ignoring UN letters and its proposals on how to structure the hybrid force. The Government of Sudan again seemed to deliberately prevent the deployment of a peacekeeping force in Darfur.²⁹⁶

By March 2007, tensions were increasing in the Security Council on the postponement of the deployment of the hybrid operation. The United States, along with the United Kingdom, argued for increased political pressure and a deadline by which the Government of Sudan needed to respond. At the same time, China, Russia, Qatar and Indonesia argued for patience as they believed that all details of the hybrid operations needed to be agreed upon by the Government of Sudan before any decisions were made.²⁹⁷ Not willing to wait for the Security Council to react, the United States imposed unilateral sanctions against Sudan, and urged the other Security Council members to take

²⁹³ The Security Council Report, December 2006.

²⁹⁴ Robert F. Worth, “Sudan Says It Will Accept U.N.-African Peace Force in Darfur,” The New York Times, November 17, 2006.

²⁹⁵ United Nations Security Council, “Statement by the President of the Security Council (S/PRST/2006/55), December 19, 2006.

²⁹⁶ Security Council Report March 2007.

²⁹⁷ Ibid.

similar action.²⁹⁸ Nonetheless, the Security Council was not able to agree on a joint action and ended up waiting for the Sudanese approval that finally came on June 12, 2007 after the hybrid plan had been altered to appease the Government of Sudan. The revised plan gave the AU control over day-to-day operations, and the UN control over the overall peacekeeping mission.²⁹⁹ Although the approval was welcomed, it was welcomed with caution by those who noted Khartoum's unreliable promises. The Security Council needed to act while the Government of Sudan was acting collaboratively.

As the tensions in the Security Council were already high because of the delayed peacekeeping operation and the Government of Sudan's unwillingness to collaborate, the Security Council needed to agree quickly on a draft resolution for the newly agreed upon hybrid force. The United Kingdom took the initial lead and circulated a drafted resolution that proposed the establishment of the AU and UN Hybrid force, UNAMID, including size, mandate, structure and timelines. The draft resolution also included the threat of sanctions if the Government of Sudan did not comply with the resolution. Although the resolution was supported by the United States and some other members (the United Kingdom and France), it was not welcomed by China, Russia and Third World states (Qatar, Indonesia and African members) that had called for patience towards the Government of Sudan. The opposition argued against the resolution, not only because of the threat of sanctions, but also because of the use of Chapter VII authorizing the use of force if necessary.³⁰⁰ A second draft was circulated again two weeks later. The revised draft had removed the threat of sanctions, but still included the use of Chapter VII. After much negotiation and political pressure from high level officials, the draft resolution was brought to a vote on July 31, 2007 and was approved unanimously by all members of the Security Council.

The decision by China to not only let the resolution pass, but to vote in favour of it, took some people by surprise. The Chinese official, Mr. Wang Guangya, explained that China had managed to obtain what it wanted in the resolution. First, the Security Council had waited to draft a resolution until they had received the consent from the Government of Sudan. Second, there were no compliance threats for the Government of

²⁹⁸ Security council Report July 207

²⁹⁹ _____, "Sudan Backs UN led Darfur force," [BBC News Online](#) (Published June 18, 2007).

³⁰⁰ Security Council Report August 2007.

Sudan included in the resolution.³⁰¹ In essence, the worst threats against the Government of Sudan's sovereignty had abated. China was also pleased with the process for the resolution that secured the consent of the Government of Sudan through "dialogue and consultation" before Security Council decisions were made.³⁰² Following this process reflects a "commitment to the sovereignty and territorial integrity of the Sudan."³⁰³ The Chinese official also expressed much satisfaction with the Government of Sudan's willingness to cooperate and to find a solution to the issues at hand, although it took the Security Council almost a year to gain consent.

The United States did not maintain the same positive attitude as China towards resolution 1769 or the Government of Sudan. The United States had been arguing for a tougher stance against Sudan's indecisiveness. According to the United States, the resolution did not include strong enough language to enforce the Sudanese Government to comply. Nonetheless, the United States Ambassador Khalilzad, expressed some satisfaction with keeping Chapter VII in the resolution. By evoking Chapter VII, the United States believed the peacekeeping force would be better prepared to support the DPA, including the use of force if necessary.³⁰⁴ The United States argued that the success of the resolution would depend on the Government of Sudan, and its decision to follow a path of "cooperation or defiance."³⁰⁵ If the Government of Sudan decided to follow the latter, the United States threatened to "move for the swift adoption of unilateral and multilateral measures."³⁰⁶ In other words, the United States promised to react to noncompliance by the Government of Sudan, even though the resolution did not include this language. The United States was sending a strong message in which they believed the Government of Sudan had no right to delay or deny the peacekeeping force to enter Darfur even if this would breach their sovereign rights.

The approval of Resolution 1769 was not followed by swift implementation. The Government of Sudan continued to deliberately delay the deployment of UNAMID operations by objecting to the suggested composition of the UNAMID forces. The UN

³⁰¹ United Nations Security Council, S/PV.5727, July 31, 2007. Page 10.

³⁰² Ibid, 10.

³⁰³ Ibid.

³⁰⁴ Ibid, 7.

³⁰⁵ Ibid.

³⁰⁶ Ibid 7 & 8.

was working hard to gain commitments from countries to assist with the mission, but as commitments were delivered, the Government of Sudan would object. Troops from Norway, Sweden, Nepal and Thailand were all denied access to Sudan in preference for African troops, while African countries were unable to commit more forces.³⁰⁷ The Government of Sudan did accept Chinese forces, although they were rejected by the rebel forces for not being neutral to the conflict. The government also put forth unrealistic demands such as advanced notice of all UNAMID movements and the power to shut down UNAMID communications and flights on short notice.³⁰⁸ The Security Council was again faced with the Government of Sudan being reluctant to cooperate or facilitate the peacekeeping deployment process.

5.4 Resolution 1828

Resolution 1769 provided a timeline that required the UNAMID deployment to be completed by December 31, 2007, and for UNAMID to take over command on January 1, 2008.³⁰⁹ When Mr. Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations, reported to the Security Council February 8, 2008 regarding the status of UNAMID, only about 7,000 of the authorized 20,000 troops were deployed.³¹⁰ Mr. Guéhenno reported the under-resourced mission was struggling to protect the civilian population with the high level of violence and unlawfulness occurring in Darfur. One of the reasons for the delay was the issue of force composition. As noted by Mr. Guéhenno, the agreement was to compose a force “predominantly African,” but not “exclusively African.”³¹¹ UNAMID was also reported to be struggling as a result of restrictions on movement and Khartoum objecting to, and blocking the movement of transportation equipment.

In response to the report by Mr. Guéhenno, China urged the international community to support the UNAMID mission by providing resources and equipment. China was one of the first countries to arrive in Darfur, and has committed 80 million Yuan (valued at approximately \$12 million USD) for the mission. In this regard, China

³⁰⁷ Security Council Report December 2007.

³⁰⁸ BBC News “Sudan blocking Darfur mission” November 28, 2007.

³⁰⁹ United Nations Security Council, Resolution 1769 (2007), S/RES/1769 (2007) page 4.

³¹⁰ Security Council Report, March 2008.

³¹¹ United Nations Security Council, S/PV.5832, February 8, 2008. Page 7.

argued that they have been a “responsible member of the international community” that has been working to find a solution to the conflict in Darfur.³¹² While China did not put any pressure on Sudan in its statement, the United States continued its pressure on the Sudanese government. The United States argued that the Government of Sudan needed to facilitate the deployment as soon as possible, and if they would be unwilling to do so the Security Council would have to “consider appropriate action to ensure compliance.”³¹³ The United States asked the international community to increase their commitment to the mission, and pointed out that it had committed \$140 million USD for UNAMID equipment and training.³¹⁴ Although the United States had some support within the Security Council to take action against the Government of Sudan for its failure to comply, there was no official reaction from the Security Council after the UNAMID report submitted by Mr. Guéhenno. It is interesting to note that the United States co-initiated with Canada a movement outside the Security Council to ensure better support for UNAMID. The group, named Friends of UNAMID, decided to support the deployment process and coordinate financial contributions for the mission. Belgium, Denmark, France, the Netherlands, Norway, Sweden, Tanzania, the United Kingdom and the European Union also joined the group, and were to hold regular planning meetings.³¹⁵ The Friends of UNAMID would become essential for the delivery of equipment, training of forces and technical support in the next months.³¹⁶ The group reflected a willingness by the international community to react outside the Security Council when the Security Council’s efforts were not meeting expectations.

By July 2008, the discussions on UNAMID heated up again, as it was time to discuss the renewal of the UNAMID mandate and Resolution 1769. The UNAMID was still struggling with less than half of its authorized forces while the situation continued to deteriorate. In the month of July alone, eight UNAMID troops were killed, and 19 wounded.³¹⁷ The mission was also still plagued by the lack of transportation and movement, which were still somewhat influenced by Khartoum’s bureaucratic processes.

³¹² Ibid, 11.

³¹³ Ibid, 23.

³¹⁴ Ibid.

³¹⁵ Security Council Report April 2008

³¹⁶ Security Council Report May, 2008

³¹⁷ Security Council Report August, 2008.

With the ICC issuing the arrest warrant for the Sudanese President on July 14, tensions further increased with Sudanese officials threatening the safety of the UNAMID troops and humanitarian aid workers.³¹⁸ The Security Council was again divided between its traditional fault lines. Some members of the Security Council urged a renewed resolution that included measures for compliance, while others requested patience and caution. The release of the presidential arrest warrant also added to the debate whether the resolution to renew the UNAMID mission should also include language about suspending the ICC rulings. The final draft submitted by the United Kingdom would include language voicing concern regarding the ICC arrest warrant and a promise to review this issue further.³¹⁹ The draft also renewed the Security Council's commitment to UNAMID and the DPA until July 2009, with a promise to have at least 80 percent of UNAMID forces deployed by the end of 2008.

Resolution 1828 was approved with 14 votes in favor on July 31, 2008. The United States decided to abstain from the vote because of the language regarding the ICC.³²⁰ However, the United States did welcome and strongly support the renewal of UNAMID in Resolution 1828.³²¹ The United States representative Wolf set forth four points concerning the American continued support for UNAMID. First, the United States voiced its willingness to take "additional measures" to ensure UNAMID would be deployed as soon as possible. Second, the United States believed that the Security Council had "fallen far short of our responsibility to protect" the people of Darfur.³²² The United States urged the UN and others to redouble its commitment, and for the UN to improve its infrastructure to ensure rapid deployment of troops.³²³ Thirdly, the United States urged the Government of Sudan to do what it could to facilitate the deployment process; comply with the UN agreements and resolutions; and also take responsibility for the security and safety of UNAMID personnel within Sudan. Lastly, the United States assured that it would continue to support the peace process and all efforts to reach a

³¹⁸ Ibid.

³¹⁹ United Nations Security Council, "Resolution 1828" July 31, 2008. S/RES/1828 (2008).

³²⁰ To read more about the United States stand against the ICC language please see chapter 3.

³²¹ United Nations Security Council, "S/PV.5947" July 31, 2008. Page 8.

³²² Ibid.

³²³ Ibid.

peaceful agreement.³²⁴ In review of the points made by the United States, it is obvious that they see a certain urgency to have the peacekeeping troops deployed, while recognizing an American sentiment that both the UN and the Government of Sudan should be doing more to facilitate the deployment. It is also interesting that the United States made note of the responsibility of a state to protect, but also the responsibility of the international community to protect when a state was unwilling or unable to do so.

In complete opposition to the statement by the United States, the Chinese representative, Mr. Wang Guangya, celebrated the progress made by Sudan, and “the generous assistance by the international community,” that had encouraged peace and development in Darfur and Africa.³²⁵ As previously mentioned by China, the key to successful peacekeeping missions is the dialogue and political negotiations. Furthermore, China reflected on the overall features of a successful peacekeeping mission;

“The successes and failures of international peacekeeping operations in recent years have shown repeatedly that a basic prerequisite for the success of any international peacekeeping mission is to seek the appreciation and cooperation of the Government and the people of the country concerned. Without that prerequisite, international peacekeeping operations, no matter how meticulously designed, can experience setbacks and even failure.”³²⁶

In other words, what China sees as being important for a successful peacekeeping mission is to obtain the consent from a government to enter. In this regard, the peacekeeping mission in Darfur has been successful, even though it had almost been two years since the UN first approved a UN peacekeeping troop to enter Darfur. During this two-year period, the Government of Sudan had managed to maintain its authority concerning who would enter the country and how they would move about within the country.

During the Fall of 2008 and the Spring of 2009, most of the UNAMID operation discussions occurred in coordination meetings known as the Tripartite Mechanism that include participants from the Government of Sudan, the UN and the AU. The negotiations were largely successful during the first months as the Government of Sudan seemed to have taken a more positive attitude towards the mission and started to more

³²⁴ Ibid, 9.

³²⁵ Ibid, 5.

³²⁶ Ibid, 6.

actively assist with the mission. In an unprecedented move, the Sudanese government allowed for UNAMID movement, night flights, more security support for UNAMID convoys and expedient processing of visas for UNAMID personnel.³²⁷ While the Sudanese renewal of collaboration efforts improved the overall movement of troops, there was still a need for more troops to be deployed. The deadline was to have 80 percent of the UNAMID troops deployed by the end of 2008, but at the beginning of January only 58 percent of the troops were deployed and the troops were still missing crucial transportation equipment. The operation had also experienced serious losses with 22 troops killed.³²⁸ There was an obvious need to increase the troops, not only to ensure the security of the people of Darfur, but also the security of the troops.

With UNAMID operation discussions occurring outside the Security Council, the discussion on the topic of Darfur in the first half year in 2009 focused mainly on the ICC arrest warrants and the expulsion of the humanitarian organizations. On July 24 the Security Council received the Secretary General Report on UNAMID for April to June by Mr. Alain Le Roy, the Under Secretary-General for Peacekeeping Operations. Mr. Le Roy reported troop presence with almost 75 percent of the troops deployed. The Government of Sudan was still attending the coordination meetings, but had started to refuse expediting some visas. Although the report was relatively positive about the progress made with troop deployment of in Darfur, Mr. Le Roy offered some sobering words.

“It has been more than five years since the Council first addressed this crisis. While the situation on the ground has changed, we are in many ways no closer to a solution now than we were when the issue was first taken up by this body. This is deeply distressing because of the human suffering that has occurred in the intervening years.”³²⁹

After the report, the Security Council voiced its support for renewing the mandate of UNAMID that was expiring in two weeks. With a new resolution being drafted, Libya suggested that it should include language that the Security Council did not support the ICC and its recently released arrest warrant for the Sudanese President.³³⁰ Libya did not

³²⁷ Security Council Report, December 2008.

³²⁸ Security Council Report, February 2009.

³²⁹ United Nations Security Council, S/PV.6170 (July 24, 2009.) page 4.

³³⁰ Security Council Report, September 2009.

receive any support for this suggestion, and China became an unlikely voice to speak against the suggested language. China argued that “this time, the draft resolution renewing UNAMID’s mandate will be focused and not revisit controversial issues so as not to undermine cooperation among the parties.”³³¹ Resolution 1881, to extend the UNAMID mission, was approved unanimously on July 31, and no official statements were submitted after the vote.³³² There were no major discussions or decisions regarding the peacekeeping mission in the Security Council in the remaining months of 2009. At the end of 2009, UNAMID had over 15,000 troops in Darfur, but was still struggling to gain security in the region and to protect the Darfur population.

5.5 Conclusion

In the case of Darfur, the Security Council joint actions have reflected an unwillingness to enter Sudan without its consent. This approach complimented Chinese policy, but was in opposition to the American policy. China has, during Security Council discussions on the topic of Darfur, continued its firm policy on peacekeeping missions for which it insists on respecting state sovereignty and receiving consent before entering a country. No issues managed to distract China from its policy, including the Government of Sudan’s non-compliance with the resolutions, the breaching of several agreements or the deliberate delaying of the deployment of the peacekeeping forces. The Chinese policy has in effect continuously regarded state sovereignty and the principle of non-intervention higher than humanitarian concerns in Darfur. The United States, on the other hand, continuously stressed the humanitarian urgency in Darfur. The American conviction in the humanitarian urgency was so strong that they were willing to act without the Security Council when they found the Security Council actions insufficient. The United States also wanted the Security Council to take a tougher stance on non-compliance and breaches by the Government of Sudan. The United States did not see it necessary to wait for the Government of Sudan’s consent, and wanted to ignore the rights Sudan had as a sovereign power. In essence, the United States argued that they abandoned these rights by failing to protect their own citizens. Nevertheless, the United

³³¹ United Nations Security Council, S/PV.6170 (July 24, 2009.) page 14.

³³² United Nations Security Council S/PV6175 (July 31, 2009).

States could not convince the Security Council to deploy the peacekeeping force without the consent present.

6. CONCLUSION

6.1 Introduction

This thesis set out to provide insight on views of state sovereignty in contemporary international relations by investigating and comparing the different perspectives and arguments of China and the United States in the Security Council concerning the Darfur crisis between 2004 and 2009. The investigation was divided into three parts to accord with three different types of resolutions proposed and/or passed concerning the Darfur situation: those implementing sanctions; those referring matters to the ICC; and those concerning the deployment of peacekeeping forces. These three sections highlighted patterns of decision-making with regards to state sovereignty. I turn now to discuss the implications of Chinese and American decision-making processes and insights into how these patterns reflect the role of state sovereignty in international relations. Finally, I will provide recommendations for future research to further clarify the understanding of state sovereignty in international relations.

6.2 Patterns of Decisions-Making and State Sovereignty

The investigation into the official statements by China in the Security Council found that China consistently used state sovereignty to justify their stance on resolutions regarding the Darfur conflict. The Chinese used the principle of state sovereignty to justify why China could never officially support any of the imposed sanctions, the referral of the Darfur conflict to the ICC, or the deployment of the peacekeeping mission without the consent of the Government of Sudan. Though China never officially vetoed a resolution, China continuously worked behind the scenes to ensure that the language in the resolutions was weakened so the breach of sovereign rights was lessened. China never publically supported the reports that the Government of Sudan was one of the perpetrators of the atrocities in Darfur or publically pressured the Government of Sudan to obey resolutions. China did soften its language somewhat by encouraging the Government of Sudan to collaborate with the Security Council during a short period in 2008. The slight change of tone in official statements was most likely the result of heightened international pressures surrounding the Summer Olympics hosted by China.

However, international pressures were never successful with changing the overall Chinese official stance that was determined to maintain the sovereign rights of Sudan. According to China, its strong commitment to state sovereignty was grounded in a deep commitment and belief in the Five Principles of Peaceful Coexistence (mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence).³³³ The five principles reflect a commitment to the traditional principles of state sovereignty, including the belief that states are the supreme authorities and decision makers in international relations.

In the case of Darfur, China's respect for sovereignty better maintained and safeguarded its national interests. China continued to be the primary importer of Sudanese petroleum, and also become Sudan's main foreign investor and military equipment exporter. China also purposely breached several sanctions imposed by the Security Council by selling military equipment to Sudan. The well-established bilateral relationship between Beijing and the Government of Sudan was never threatened because of China's consistent approach to safeguard Sudanese sovereign rights. The Chinese became the Sudanese main savior in the Security Council. In essence, the Chinese actions demonstrated that they valued the relationship with Sudan higher than their commitment to the Security Council and the approved resolutions. However, China did recognize the impact the resolutions could potentially have in Sudan as China purposely delayed discussions and weakened the language in the resolutions.

It is difficult to know whether China embraced the traditional meaning of state sovereignty because of their national interests in Sudan or if its deep commitment to traditional state sovereignty happened to support their national interests in the case of Darfur. Nonetheless, this thesis provides insight into how China uses state sovereignty as the main reason to justify their stance in the Security Council in the case of Darfur.

Conversely, the United States recognized state sovereignty as the primary concern in the case of Darfur. While the Chinese always applied the same rigid application of state sovereignty, the United States evolved its application over the same period. At the start of the discussions of the Darfur conflict, the United States wanted to find a quick

³³³ See pages 10 to 11.

solution to the conflict, but gave the Government of Sudan, as the sovereign power of the region, the responsibility to find a solution to the conflict. As the conflict worsened, the United States became more willing to ignore Sudanese sovereign rights as Sudan was purposely ignoring their responsibilities to protect the people in Darfur. The United States was often one of the principal sponsors of a resolution in the case of Darfur which reflects a significant effort to bring the conflict to the fore and onto the Security Council agenda. The United States was also very vocal in its criticism of the Government of the Sudan as a perpetrator of what the United States described as genocide. In the end, the sovereign rights of the Government of Sudan were seen as less important than the urgency of the humanitarian disaster in the region. This was particularly evident as the United States argued that the international community did not need to obtain the Sudanese Government's consent before deploying the peacekeeping force, although a military force within the border of another country is illegal and one of the most serious breaches of state sovereignty.

In an unprecedented move, the United States supported the ICC to be the principle vehicle for achieving judicial justice in Darfur and tried to prevent other states within the Security Council from blocking the ICC prosecution of President Al-Bashir. Time will tell whether this will be the start of a new American approach to the ICC or a single-case scenario. The recognition of the ICC reflects a willingness to reinterpret the American stance on the ICC and the overall exercise of international law.

Overall, this study found that the United States used a modern application of state sovereignty in the Security Council and its decision-making in the case of Darfur. In the modern interpretation of state sovereignty, the United States realized that the Government of Sudan as the sovereign power of Darfur had failed in its responsibility to protect its citizens and therefore had also abandoned its rights as a sovereign power. As a result, the United States argued that the international community had inherited the responsibility to protect the people of Darfur.

In summary, this study found that state sovereignty is still at the core of the official foreign policies of China and the United States. However, China and the United States have applied two different interpretations of state sovereignty. The conflicting interpretations of state sovereignty complicated the decision-making process in the

Security Council and delayed a response to the ongoing conflict in Darfur. Although the United States was able to put Darfur on the agenda, China was able to influence the Security Council resolutions more than the United States, and as a result, the sovereign rights of the Government of Sudan were always protected and respected.

The Chinese applied its cautious approach with a great consistency throughout the Security Council discussions. The United States' approach was not conducive to either achieving results in the Security Council or maintaining bilateral relations with Sudan. China's cautious approach, which was mainly focused on respecting the Sudanese sovereignty, was more successful in achieving both objectives.

6.3 State Sovereignty in Contemporary International Relations

It is apparent that state sovereignty plays an important role in contemporary international relations. In the case of Darfur, the Security Council resolutions were highly influenced by the interpretations of state sovereignty of its members, and this had tremendous implications for the ongoing conflict in Darfur. The investigation into the official stance by China and the United States also provides some general conclusions about the importance of state sovereignty in international relations.

1. The concept of state sovereignty remains at the center of decision-making in international relations, and is therefore still a key building block of international relations.
2. Interpretations of "state sovereignty" vary among states, which can delay decision-making processes in the Security Council.
3. State authorities can use their rights as sovereign states as a barrier to effective international action to prevent atrocities and heinous crimes against humanity.
4. The rights of sovereign states are protected more than individual rights of human beings.

These general observations indicate the existence of an international community that is still defined by the traditional principles of state sovereignty, including non-interference into internal affairs and mutual respect for all sovereign states.

Although the United States applies a more modern interpretation of state sovereignty in its official statements in the case of Darfur, this was not reflected in the final Security Council resolutions. It should be mentioned that the modern interpretation by the United States reflects an influence by the R2P agenda, which was defined as the most profound challenge in the 21st century to international law and the traditional interpretation of state sovereignty. Nonetheless, China and others in the Security Council did not support the R2P agenda in their actions or resolutions. Therefore, there is no evidentiary support recognizing the R2P agenda being part of customary international law. The strong commitment to the traditional principles of state sovereignty reflects that R2P is not a profound challenge to state sovereignty at present.

The findings of this investigation also lead to important conclusion regarding the efficiency of the United Nations Security Council. In the case of Darfur, the Security Council has been rather unsuccessful in ending the violence and the atrocities. Although the structure and composition of the Security Council has in other cases been blamed for the inefficiency, the case of Darfur provides evidentiary support that it is the different interpretations of state sovereignty that has delayed the decision-making process. The lack of wording in international law on how to integrate the principles of state sovereignty into policies has created the opportunity for states to interpret and apply state sovereignty to match their own national interests. If the Security Council is to become a proficient protector of international peace and security there needs to be clear guidelines and policies developed to apply state sovereignty in international relations. However, states will most likely be reluctant to give up its current flexibility and powers as it is beneficial for national interests.

APPENDIX

TIMELINE

The United Nations Security Council and Darfur Discussions January 2005 to December 2009

Date	Action
May 25, 2004	- <i>A Presidential Statement released by the President of the UN Security Council, Mr Akram (Pakistan). The Statement expressed its grave concern over the deteriorating humanitarian and human rights situation in the Darfur region of Sudan.</i>
July 3, 2004	- <i>A Joint Communiqué released by the UN and the Government of Sudan committing both parties to invest resources to end the escalating conflict in Darfur.</i>
July 30, 2004	- Resolution 1556 approved with 13 votes in favour and 2 votes abstaining (China and Pakistan). The resolution called on the Government of Sudan to fulfil immediately all of the commitments it made in the 3 July 2004 Communiqué. The resolution also decided that all member states shall prevent the sale or supply of arms to the Government of Sudan, the Janjaweed and the rebels.
Sept 2, 2004	- <i>Report of the Secretary-General pursuant to resolution 1556(2004) presented by Mr. Jan Pronk, Special Representative of the Secretary-General for the Sudan and head of the peace support operation.</i>
Sept 18, 2004	- Resolution 1564 approved with 11 votes in favour and 4 votes abstaining (Algeria, China, Pakistan and Russian Federation). The Resolution declared an intention to consider sanctions to obtain full compliance with the Security Council resolution 1556.
Sept 20, 2004	- <i>A closed meeting with Dr. Mustafa Osman Ismail, the Minister for Foreign Affairs of the Sudan.</i>
Nov 4, 2004	- <i>Report of the Secretary-General on the Sudan presented by Mr. Jan Pronk, Special Representative of the Secretary-General for the Sudan and head of the peace support operation.</i>
Nov 18, 2004	- <i>A closed meeting with Mr. Ahmed Aboul-Gheit, Minister for Foreign Affairs of Egypt and Mr. Lazarus Sumbeiywo, Special Envoy for the Intergovernmental Authority on Development (IGAD) on the Sudan.</i>
Nov 19, 2004	- Resolution 1574 adopted with all votes in favour. The Resolution declared its strong support for the efforts of the Government of Sudan and the Sudan People's Liberation Movement/Army to reach the Comprehensive Peace Agreement.
Dec 7, 2004	- <i>Report of the Secretary-General on the Sudan presented by Mr. Kieran Prendergast, Under-Secretary- General for Political Affairs.</i>
Jan 11, 2005	- <i>Report of the Secretary-General on the Sudan presented by Mr. Jan Pronk, Special Representative of the Secretary-General for the Sudan and head of the peace support operation.</i>
Feb 4, 2005	- <i>Report of the Secretary-General on the Sudan presented by Mr. Jan Pronk, Special Representative of the Secretary-General for the Sudan and head of the peace support</i>

	<i>operation.</i>
Feb 8, 2005	- <i>Reports of the Secretary-General on the Sudan presented by Mr. Ali Othman Taha, First Vice-President of the Sudan; Mr. John Garang de Mabior, Chairman of the Sudan People's Liberation Movement/Army; Mr. Baba Gana Kingibe, Special Representative of the Chairperson of the Commission of the African Union in the Sudan; and Mr. Jan Pronk, Special Representative of the Secretary-General for the Sudan.</i>
Feb 16, 2005	- <i>Report of the Secretary-General on the Sudan presented by Ms. Louise Arbour, United Nations High Commissioner for Human Rights.</i>
Mar 24, 2005	- Resolution 1590 approved with all votes in favour. The resolution decided to establish the United Nations Mission in Sudan (UNMIS) to support implementation of the Comprehensive Peace Agreement.
Mar 29, 2005	- Resolution 1591 approved with 12 votes in favour and 3 abstaining (Algeria, China and Russia). The resolution imposed travel bans and assets freeze on those impeding the peace process in Darfur, and established a committee to oversee the implementation of the sanctions.
Mar 30, 2005	- <i>Report of the Secretary-General on the Sudan. The meeting was delayed until the next day</i>
Mar 31, 2005	- Resolution 1593 approved with 11 votes in favour and four votes abstaining (Algeria, Brazil, China, United States of America). The Resolution referred the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court.
May 12, 2005	- <i>Report of the Secretary-General on the Sudan presented by Mr. Hédi Annabi, Assistant Secretary-General for Peacekeeping Operations.</i> - <i>The Security Council applauded the African Union's vital leadership role in Darfur and the work of the African Union Mission in the Sudan (AMIS), and its decision to expand its mission to 7,731 personnel by the end of September 2005.</i>
June 29, 2005	- <i>Report of the Secretary-General on the Sudan presented by Mr. Luis Moreno- Ocampo, Prosecutor of the International Criminal Court.</i> - <i>A closed meeting with Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal - Court.</i>
July 22, 2005	- <i>Report of the Secretary-General on Darfur presented by Mr. Jan Pronk, Special Representative of the Secretary-General for the Sudan and Head of the United Nations Mission in the Sudan.</i>
Oct 13, 2005	- <i>A Presidential Statement released by the President of the UN Security Council, Mr Motoc (Romania). The Statement released expressed its grave concern at recent reports of an upsurge of violence in Darfur.</i>
Dec 13, 2005	- <i>Report of the Secretary-General on the Sudan presented by Mr. Luis Moreno- Ocampo, Prosecutor of the International Criminal Court.</i> - <i>A closed meeting with Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court.</i>
Dec 21, 2005	- Resolution 1651 was approved with all votes in favour. The resolution decided to extend the mandate of the Panel of Experts appointed pursuant to resolution 1591 (2005) until 29 March 2006. - <i>A Presidential Statement released by the President of the UN Security Council, Mr. Thomson (the UK). The statement welcomed the commencement in Abuja, Nigeria, of the seventh</i>

	<i>round of the African Union (AU)-led inter- Sudanese peace talks on Darfur, and expresses its appreciation to the African Union, the international community and the other donors.</i>
Jan 13, 2006	<ul style="list-style-type: none"> - <i>Report of the Secretary-General on the Sudan presented by Mr. Jan Pronk, Special Representative of the Secretary-General for the Sudan and Head of the United Nations Mission in the Sudan, and Mr. Salim A. Salim, Special Envoy of the African Union for the Inter-Sudanese Peace Talks on the Conflict in Darfur.</i> - <i>A closed meeting with Mr. Jan Pronk, Special Representative of the Secretary-General for the Sudan and Head of the United Nations Mission in the Sudan, and Mr. Salim A. Salim, Special Envoy of the African Union for the Inter-Sudanese Peace Talks on the Conflict in Darfur.</i>
Feb 3, 2006	- <i>A Presidential Statement released by the President of the UN Security Council, Mr. Bolton (the US). The statement commends the efforts of the African Union for successful deployment of the African Union Mission in Sudan (AMIS) and for significant contribution to the provision of a secure environment for civilians and the humanitarian situation in Darfur.</i>
Mar 21, 2006	- <i>Report of the Secretary-General on the Sudan presented by Jan Pronk, Special Representative of the Secretary-General for the Sudan and Head of the United Nations Mission in the Sudan.</i>
Mar 24, 2006	- Resolution 1633 approved with all votes in favour. The resolution decided to extend the mandate of UNMIS until 24 September 2006.
Mar 29, 2006	- Resolution 1665 was approved with all votes in favour. The Resolution decided to extend until 29 September 2006 the mandate of the Panel of Experts originally appointed pursuant to resolution 1591 (2005).
Apr 18, 2006	<ul style="list-style-type: none"> - <i>Report of the Secretary-General on the Sudan presented by Mr. Salim A. Salim, African Union Special Envoy for the Inter-Sudanese Peace Talks on Darfur and Chief Mediator.</i> - <i>A closed meeting with Mr. Salim A. Salim, African Union Special Envoy for the Inter-Sudanese Peace Talks on Darfur and Chief Mediator.</i>
Apr 25, 2006	<ul style="list-style-type: none"> - <i>A Presidential Statement released by the President of the UN Security Council, Mr. Guangya (China). The Statement called for an end to the violence in Darfur, and call on all parties to the conflict to fulfil their commitments to conclude a peace accord in Darfur.</i> - Resolution 1672 approved with 12 votes in favour and 3 votes abstaining (China, Qatar, Russian Federation). The Resolution decided to implement sanctions against 4 individuals involved in the Darfur Conflict.
May 9, 2006	<ul style="list-style-type: none"> - <i>Report of the Secretary-General on the Sudan presented by Mr. Yahya Mahmassani, Permanent Observer of the League of Arab States to the United Nations.</i> - <i>A Presidential Statement released by the President of the UN Security Council, Mr. Adada (the Congo). The statement released to welcome the agreement of 5 May 2006 reached at the intra-Sudanese peace talks in Abuja as a basis for lasting peace in Darfur.</i>
May 16, 2006	- Resolution 1679 approved with all votes in favour. The Resolution called upon the parties to the Darfur Peace Agreement to respect their commitments and implement the agreement without delay, and to strengthen AMIS's capacity to enforce the security arrangements of the Darfur Peace Agreement.
May 19, 2006	- <i>Report on the situation in Chad and the Sudan presented by Mr. Jan Egeland, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator.</i>

June 14, 2006	<ul style="list-style-type: none"> - <i>Report of the Secretary-General on the Sudan presented by Mr. Luis Moreno- Ocampo, Prosecutor of the International Criminal Court. Statements made by Sudan.</i> - <i>A closed meeting with Mr. Luis Moreno- Ocampo, Prosecutor of the International Criminal Court.</i>
June 29, 2006	<ul style="list-style-type: none"> - <i>Report of the Security Council mission to the Sudan and Chad presented by Sir Emyr Jones Parry, in his capacity as head of the Security Council mission to the Sudan and Chad.</i>
Aug 28, 2006	<ul style="list-style-type: none"> - <i>A closed meeting with Mr. Hédi Annabi, Assistant Secretary-General for Peacekeeping Operations, and Mr. Jan Egeland, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator.</i>
Aug 31, 2006	<ul style="list-style-type: none"> - Resolution 1706 approved with 12 votes in favour and 3 votes abstaining (China, Qatar, Russian Federation). The Resolution decided that the UNMIS' mandate shall be expanded to Darfur, and therefore invites the consent of the Government of National Unity for this deployment.
Sept 11, 2006	<ul style="list-style-type: none"> - <i>Report of the Secretary-General on the Sudan presented by the Secretary-General, Mr. Kofi Annan.</i>
Sept 18, 2006	<ul style="list-style-type: none"> - <i>Report of the Secretary-General on the Sudan presented by Mr. Jan Pronk, Special Representative of the Secretary-General for the Sudan and Head of the United Nations Mission in the Sudan.</i>
Sept 22, 2006	<ul style="list-style-type: none"> - Resolution 1709 approved with all votes in favour. The Resolution decided to extend the mandate of UNMIS until 8 October 2006.
Sept 29, 2006	<ul style="list-style-type: none"> - Resolution 1713 approved with all votes in favour. The Resolution decided to extend until 29 September 2007 the mandate of the Panel of Experts originally appointed pursuant to resolution 1591 (2005) and previously extended by resolutions 1651 (2005) and 1665 (2006).
Oct 6, 2006	<ul style="list-style-type: none"> - Resolution 1714 approved with all votes in favour. The Resolution decided to extend the mandate of UNMIS until 30 April 2007.
Nov 22, 2006	<ul style="list-style-type: none"> - <i>Report on the Situation in Africa (including Darfur) Briefing Mr. Jan Egeland, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator.</i>
Dec 14, 2006	<ul style="list-style-type: none"> - <i>Report of the Secretary-General on the Sudan presented by Mr. Luis Moreno- Ocampo, Prosecutor of the International Criminal Court.</i> - <i>A closed meeting with Mr. Luis Moreno- Ocampo, Prosecutor of the International Criminal Court.</i>
Dec 15, 2006	<ul style="list-style-type: none"> - <i>A Presidential Statement released by the President of the UN Security Council, Mr. Al-Bader (Qatar). The statement expressed grave concern regarding the increase in military activities of armed groups in eastern Chad, and concern over the continuing tensions between Chad and the Sudan.</i>
Dec 19, 2006	<ul style="list-style-type: none"> - <i>A Presidential Statement released by the President of the UN Security Council, Mr. Al-Nassar (Qatar). The statement endorsed the conclusions of the Addis Ababa high-level Consultation on the situation in Darfur of 16 November 2006.</i>
Jan 16, 2007	<ul style="list-style-type: none"> - <i>A Presidential Statement released by the President of the UN Security Council, Mr. Churkin (Russian Federation). The statement expressed concern about the continuing instability</i>

	<i>along the borders between the Sudan, Chad and the Central African Republic and about the threat which this poses to the safety of the civilian population and the conduct of humanitarian operations.</i>
Apr 23, 2007	- <i>A closed meeting with troop-contributing countries to the United Nations Mission in the Sudan.</i>
Apr 30, 2007	- Resolution 1755 approved with all 15 votes in favour. The Resolution decided to extend the mandate of UNMIS until 31 October 2007.
May 25, 2007	- <i>A Presidential Statement released by the President of the UN Security Council, Mr. Khalilzad (The United States). The statement welcomed the transmission of the report of the Secretary-General and the Chairperson of the African Union Commission on the Hybrid Operation in Darfur, which contains recommendations regarding a mandate and a structure for the Hybrid Operation, details on the various components of the proposed operation and their specific tasks, and a description of the ongoing efforts of the international community to support the peace process in Darfur and to strengthen the African Union Mission in the Sudan (AMIS).</i>
June 7, 2007	- <i>Report of the Secretary-General on the Sudan presented by Mr. Luis Moreno- Ocampo, Prosecutor of the International Criminal Court.</i> - <i>A closed meeting with Mr. Luis Moreno- Ocampo, Prosecutor of the International Criminal Court.</i>
July 31, 2007	- Resolution 1769 approved with all 15 votes in favour. The resolution decided to authorise and mandate the establishment of an AU/UN Hybrid operation in Darfur (UNAMID).
Sept 28, 2007	- Resolution 1779 approved with all 15 votes in favour. The resolution decided to extend until 15 October 2008 the mandate of the current Panel of Experts, originally appointed pursuant to resolution 1591 (2005) and previously extended by resolutions 1651 (2005), 1665 (2006), and 1713 (2006).
Oct 2, 2007	- <i>A Presidential Statement released by the President of the UN Security Council, Mr. Christian (Ghana). The statement condemned the deadly attack on African Union peacekeepers in Haskanita, South Darfur, Sudan, reportedly committed by a rebel group.</i>
Oct 24, 2007	- <i>A Presidential Statement released by the President of the UN Security Council, Mr. Christian (Ghana). The statement released to welcomes the of peace talks on 27 October in Sirte, while expressing its strong concern at the continuing deterioration in the security and humanitarian situation in Darfur.</i>
Oct 29, 2007	- <i>A closed meeting with troop-contributing countries to the United Nations Mission in the Sudan.</i>
Oct 31, 2007	- Resolution 1784 approved with all votes in favour. The Resolution decided to extend the mandate of UNMIS until 30 April 2008.
Dec 5, 2007	- <i>Report of the Secretary-General on the Sudan presented by Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court.</i>
Jan 9, 2008	- <i>Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur. Executive Summary provided by the Under-Secretary-General for Peacekeeping Operations, Jean-Marie Guéhenno.</i>

Jan 11, 2008	- <i>A Presidential Statement released by the President of the UN Security Council, Mr. Ettlhi (Libya). The statement condemned the deadly attack on a UNAMID by Sudanese Armed Forces.</i>
Feb 8, 2008	- <i>Reports of the Secretary-General on the Sudan presented by the Special Envoy of the Secretary-General for Darfur, Mr. Jan Eliasson.</i>
Feb 19, 2008	- <i>Report of the Secretary-General on the Sudan presented by Special Representative of the Secretary-General for the Sudan, Mr. Qazi Ashraf Jehangir.</i>
Mar 11, 2008	- <i>Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur presented by Special Representative of the Secretary-General for the Sudan, Assistant Secretary-General for Peacekeeping Operations, Mr. Edmond Mulet.</i>
Apr 22, 2008	- <i>Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur presented by Mr. John Holmes, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator.</i>
Apr 24, 2008	- <i>A closed meeting for troop-contributing countries to the United Nations Mission in the Sudan.</i>
Apr 30, 2008	- <i>Resolution 1812 was approved by all members in favour. The Resolution extended the mandate of UNMIS until 30 April 2009.</i>
May 13, 2008	<ul style="list-style-type: none"> - <i>Report of the Secretary-General on the Sudan. A condemnation against attacks by JEM on Government forces was read by the President of the UN Security Council, Sir John Sawers (United Kingdom of Great Britain and Northern Ireland).</i> - <i>Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur presented by Mr. Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Affairs.</i>
June 5, 2008	- <i>Report of the Secretary-General on the Sudan. Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court provided a brief report.</i>
June 16, 2008	- <i>Report of the Secretary-General on the Sudan. The President of UN Security Council, Mr. Khalilzad (the United States), reads a statement prepared by Security Council on the referral to ICC.</i>
June 24, 2008	- <i>Reports of the Secretary-General on the Sudan presented by Mr. Jan Eliasson, Special Envoy of the Secretary-General for Darfur, and by Mr. Salim Ahmed Salim, Special Envoy of the African Union for Darfur.</i>
July 16, 2008	- <i>Report of the Secretary-General on the Sudan. The President of UN Security Council, Mr. Le Luong Minh (Viet Nam), reads a statement condemning attacks against the UNAMID and its regrets for the death of peacekeepers. .</i>
Jul 31, 2008	- <i>Resolution 1828 was approved with 14 in favour and one abstaining vote (the United States). The Resolution extends the mandate of UNAMID for a further 12 months to 31 July 2009.</i>
Aug 18, 2008	- <i>Report of the Secretary-General on the Sudan presented by head of the United Nations Mission in the Sudan, Mr. Ashraf Jehangir Qazi.</i>

Oct 15, 2008	- Resolution 1841 was approved with all in favour. The Resolution extended the mandate of the current Panel of Experts (overseeing Arms embargo) until 15 October 2009.
Oct 28, 2008	- Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur presented by Alain Le Roy, Under-Secretary-General for Peacekeeping Operations.
Nov 5, 2008	- Report of the Secretary-General on the Sudan Mr. Edmond Mulet, Assistant Secretary-General for Peacekeeping Operations.
Dec 3, 2008	- Report of the Secretary-General on the Sudan by Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court.
Dec 19, 2008	- Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur presented by Mr. Alain Le Roy, Under-Secretary-General for Peacekeeping Operations.
Feb 5, 2009	- Report of the Secretary-General on the Sudan presented by Mr. Ashraf Jehangir Qazi, Special Representative of the Secretary-General and head of the United Nations Mission in the Sudan.
Mar 20, 2009	- Report of the Secretary-General on the Sudan presented by Mr. Rashid Khalikov, Director of the Office for the Coordination of Humanitarian Affairs.
Apr 23, 2009	- A closed meeting for troop-contributing countries to the United Nations Mission in the Darfur.
Apr 27, 2009	- Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur presented by Mr. Rodolphe Adada, Joint African Union-United Nations Special Representative for Darfur and head of the African Union-United Nations Hybrid Operation in Darfur.
Apr 30, 2009	- Resolution 1870 was approved with all votes in favour. The resolution extended the mandate of UNMIS until April 30, 2010..
June 5, 2009	- Report of the Secretary-General on the Sudan presented by Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court. - A closed meeting to discuss Sudan (no specific topic elaborated on).
June 11, 2009	- Report of the Secretary-General on the Sudan presented by Mr. John Holmes, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator.
July 24, 2009	- A closed meeting for troop-contributing countries to the United Nations Mission in the Darfur. - Report of the Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur presented by Mr. Alain Le Roy, Under-Secretary-General for Peacekeeping Operations.
July 30, 2009	- Resolution 1881 was approved with all votes in favour. The resolution extended the mandate of UNAMID as set out in resolution 1769 (2007) for a further 12 months to 31 July 2010.
Oct 13, 2009	- Resolution 1891 was approved with all votes in favour. The resolution extended the mandate of the Panel of Experts (overseeing Arms embargo) until October 15, 2010.

Nov 30, 2009	- <i>Report of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur (UNAMID) by Mr. Edmond Mulet, Assistant Secretary-General for Peacekeeping Operations, and Mr. Djibril Bassolé, and Joint African Union-United Nations Chief Mediator for Darfur.</i>
Dec 4, 2009	- <i>Report of the Secretary-General on Sudan by Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court.</i>
Dec 21, 2009	<ul style="list-style-type: none"> - <i>Report of the Secretary-General on Sudan by Mr. Jean Ping, Chairperson of the African Union Commission, and Mr. Thabo Mbeki, Chairperson of the African Union High-Level Panel on Darfur.</i> - <i>A closed meeting followed to discuss the report provided by Mr. Ping and Mr. Mbeki.</i>